917.

SUPREME COURT OF THE UNITED STATES.

No. 103.

DAVID OGDEN, APPELLANT,

vs.

JOTHAM PARSONS, JOHN A. McGAW, JOSHUA ATKINS, EDWIN ATKINS, AND JOSHUA ATKINS, JR.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this eleventh [L. S.] day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the said United States the eighty-second.

KENNETH G. WHITE, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of New York, ss.

JOTHAM PARSONS
vs.
DAVID OGDEN.

I, George W. Morton, clerk of the district court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this seventh [L. S.] day of March, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the said United States the seventy-ninth.

GEORGE W. MORTON, *Clerk.*

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on the third day of July, in the year of our Lord one thousand eight hundred and fifty-four.

Present, the Honorable Charles A. Ingersoll, district judge.

JOTHAM PARSONS, JOHN A. MCGAW, Joshua Atkins, Edwin Atkins, and Joshua Atkins, jr.,
vs.
DAVID OGDEN.

1851, Oct. 17. The libellants file their libel in the words and figures following, to wit:

[REC. CIII, D. T., 1858.]—1

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

The libel and complaint of Jotham Parsons, John A. McGaw, Joshua Atkins, Edwin Atkins and Joshua Atkins, jr., owners of the American ship or vessel called the "Hemisphere," whereof one Captain William Whittlesey now is or late was master, against David Ogden, of the city of New York, merchant, in a cause of charter-party of affreightment, and thereupon the said libellants allege and articulately propound as follows:

First. That this is an action founded upon contract on charter-party, and the said defendant is now in the port and district of New York, and within the jurisdiction of this honorable court, and that the said defendant has also goods and chattels, credits and effects in the port and district of New York, and within the jurisdiction of this court.

Second. That some time in the month of April, the twenty-eighth day of April, in the year of our Lord 1851, said ship, then lying in the port of New York, on the high seas, and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court, the said vessel then being owned by the libellants, together with one William Whittlesey, being tight and st[illegible] and the firm of McGaw, Foster & Co., of New York, acti[illegible] agents of the said vessel, and the said Ogden did for himself make and enter into a charter-party of affreightment, wherein and whereby it was agreed, on the chartering and hiring of the said vessel, with the exception of the deck-cabin and necessary room for the crew, stowage of provisions, &c., for a voyage from Liverpool to New York, on the following terms: The libellants were to keep the vessel tight, strong, &c., and to receive on board a cargo of lawful merchandise. The respondent agreed to furnish said vessel with a full cargo of merchandise, and not exceeding five hundred and thirteen (513) second cabin and steerage passengers, the ship not to take exceeding her register tonnage of iron; and the respondent was to pay to the libellants the sum of £1,500 sterling; the bills of lading to be taken in part payment, said sum of £1,500 to be free and above all commissions; the balance of the charter money payable in Liverpool before sailing; that the charterer was to be allowed 15 running log days to load and furnish her cargo and passengers, as by the terms of said charter fully appear, by the charter-party in possession of the libellent, and to which he prays leave to refer, *will appear*.

Third. That the said charter-party having been so made as aforesaid, the s'd libellants on their part duly complied with and completed all the covenants on their part to be performed, but that the respondent neglected and refused to perform the same on his part, but, on the other hand, kept and detained the vessel at Liverpool for

the period of seven days, whereby the libellants became entitled to the full sum of the money mentioned in the charter, and also the sum of $700 for demurrage; that respondent also refused and neglected to pay the commutation money and other charges, and that in all there is now due to the libellants the sum of $4,950 and upwards, together with interest thereon from 12 July, 1851; that payment has been duly demanded and refused, and that the interest of said Whittlesey therein has been assigned to libellants.

Fourth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court. In verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause; wherefore the libellants pray that process in due form of law, according to the course of courts of admiralty and of this honorable court, may issue, with a clause of foreign attachment therein, and that the defendant appear and answer all and singular the matters hereinbefore propounded, and that this honorable court would be pleased to pronounce for the libellants' claim aforesaid and costs, or for such relief as may be just.

JOTHAM PARSONS.

BETTS & DONOHUE, *for Lib'll't.*
W. R. BEEBE, *Advo.*

Sworn to before me this 17th day of Oct., A. D. 1851.

GEO. W. MORTON,
U. S. Com'r.

Endorsed: 9; 400. U. S. district court. Jotham Parsons, &c., vs. David Ogden. Libel. Betts and Donahue for libl't. Filed Oct. 17, 1851.

District Court of the United States for the southern district of New York.

Filed the 17th day of October, 1851.

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the seventeenth day of October, in the year of our Lord one thousand eight hundred and fifty-one, by Jotham Parsons and others, against David Ogden, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue against the said respondent, and the said libellant and surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their sureties, execution may issue against their goods, chattels, and lands, for the sum of one hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall

be, and each of them is bound in the sum of one hundred dollars, conditioned that the libellants above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal by the appellate court.

JOTHAM PARSONS.
JOHN A. McGAW.

Taken and acknowledged this 17th day of October, 185 , before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

John A. McGaw, party to the above stipulation, being duly sworn, doth depose and say, that he resides at 96 West 13th street, New York; that he is worth the sum of two hundred dollars, over and above all his just debts and liabilities.

Sworn to this 17th day of October, 1851, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the 17th day of October, 1851.

G. W. MORTON, *Clerk.*

The President of the United States of America to the Marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States of America for the southern district of New York, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and fifty-one, by Jotham Parsons and others, against David Ogden, in a certain action, civil maritime, for damages by breach of charter-party therein alleged to have been sustained by the said libellant, amounting to four thousand nine hundred and fifty dollars, and praying that a warrant of arrest may issue against the said respondent pursuant to the rules and practices of this court:

Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you take and arrest the said respondent, if he shall be found in your district, and him safely keep, so that you may have his body before the said district court, on the 21st day of October, at the City Hall, in the city of New York, then and there to answer to said libel, and to make his allegations in that behalf; and if the said respondent cannot be found, that you attach his goods and chattels to the amount sued for; and if such property cannot be found, that you attach the credits and effects to the amount sued for in the hands of his garnishees; and have you then and there this writ, with your return thereon.

Witness the Honorable Samuel R. Betts, judge of said court, this

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17th day of October, in the year of our Lord one thousand eight hundred and fifty-one, and of our independence the seventy-sixth.

GEO. W. MORTON, *Clerk.*

BETTS & DONAHUE, *Proctors.*

Vol. 9; No. 400. United States district court. Jotham Parsons et al. vs. David Ogden.

Warrant of Arrest.

Returnable 21st October, 1851.

BETTS & DONAHUE,
Proctor for Lib.

Filed October 21, 1851.

I hereby depute Peter Cook to execute the within process.
Dated 17th Oct., 1851.

H. F. TALLMADGE,
U. S. Marshal.

Served David Ogden, the within named def't, by leaving a copy of the within process with a clerk of the said Ogden, in the city of New York.

H. F. TALLMADGE,
U. S. Marshal.

97 Wall st. house; 60 West 14th st.

18th Oct., 1851.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Tuesday the 21st day of October, in the year of our Lord one thousand eight hundred and fifty-one.

Present, the Honorable Andrew T. Judson, district judge.

JOTHAM PARSONS et al.
vs.
DAVID OGDEN.

The marshal having returned on the warrant of arrest issued in the above entitled cause, that he had served David Ogden, the defendant, by leaving a copy thereof with a clerk of said Ogden—

On motion of E. H. Owen, attorney for the defendant, it is ordered that the respondent's appearance be entered, and that he have ten days to file and perfect his answer.

On motion of Messrs. Betts & Donohue, attorneys for libellant, ordered default nisi, and reference.

U. S. District Court.

DAVID OGDEN
ads.
JOTHAM PARSONS, JOSHUA ATKINS, EDWIN ATKINS and JOSHUA ATKINS, jr.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States, within and for the southern district of New York:

The answer of the above named David Ogden to the libel and complaint of the above named libellants, alleges and articulately propounds as follows, that is to say:

First. This respondent says it is true, and he admits, that he did charter the ship Hemisphere for a voyage from L'pool to New York, and that he did make and execute a charter-party, which was also executed by or on behalf of the libellants, a true copy whereof is hereto annexed, and forms part of this answer; but whether or not the same is correctly set forth in the libel, this respondent cannot answer, and therefore does not admit the second article of the said libel, but leaves the libellants to the proof thereof. But this respondent says that the said vessel was in fact chartered by this respondent as agent for Messrs. Taylor & James, of Liverpool, who are the true charterers, and the parties liable under the same, which was known to the libellants.

Second. This respondent, further answering, denies that the libellants on their part have gone on or performed the said charter-party in all things on their part, or that they have taken a cargo of merchandise and passengers from Liverpool to New York, according to the terms and conditions of the said charter-party, in manner and form as alleged in the third article of the libel; but, on the contrary, this respondent says that the libellants have violated and broken the conditions of the said charter-party, on their part to be performed and fulfilled, in various ways; and amongst others in this, that they did not nor would take and receive in and on board of the said vessel the number of passengers in the said charter-party mentioned—that is to say, 513—although that number was duly tendered and offered to the said ship, and the master thereof was then and there requested to receive the same on board according to the terms and conditions of the said charter-party; and the said master then and there refused, and did not nor would take and receive on board, and transport in the said ship upon the said voyage, more than 350 passengers, although he might and could have taken, received, and transported the full number above, and in the charter-party mentioned. And this respondent further says, that the said libellants did not nor would take and receive in and on board of said vessel a full cargo of merchandise, and transport the same on the voyage aforesaid, according to the terms of the said charter-party, but, on the contrary, they refused so to do, and did not nor would receive the same; and to avoid doing so, they carelessly, wrongfully, improperly, and contrary to usage, stowed portions of the cargo, consisting of iron and earthenware, in parts of the ship where it in good faith, and according to the true intent and meaning of the said charter-party and the usage in

such cases, *it* ought not to have been stowed, and thereby wrongfully deprived the respondent from the full and lawful use of the ship, and from carrying a full cargo of general merchandise with the passengers aforesaid; and the respondent has, by reason of the unlawful, improper, and wrongful acts of the libellants and their agents in the premises, been deprived of the gain and profits which otherwise would have accrued to him from the said charter; and this respondent has thereby and otherwise sustained damages to a large amount, that is to say, to the amount of $5,000 and upwards, which he claims to recoupe in this action.

Third. This respondent, further answering, denies that he has in any manner omitted or refused to perform, fulfil, and keep the said charter-party on his part, or that he has in any manner neglected or refused so to do, in manner and form as alleged in the fourth article of the libel.

Fourth. And this respondent, further answering, denies that he kept and detained the said vessel in Liverpool for the space of seven days, or any other time whatever, beyond the lay-days in the charter-party mentioned. He further says, that the vessel was not ready for cargo according to the terms of the charter-party, and the usage and custom in like cases, before the 30th June, 1851. He denies that the sum of $7,000, or any other sum, is due by him to the libellants for demurrage, in manner and form as alleged in the 4th article of the libel.

Fifth. This respondent admits that he has not paid the full amount of fifteen hundred pounds, although a portion, that is to say, £1,041 pounds 6 shillings and 5 pence thereof, has been paid. He, further answering, denies that there is due and owing to the libellants upon the said charter-party, or otherwise, the amount in this behalf claimed in the 5th article of the said libel; but, on the contrary, this respondent believes and charges that there is nothing due by him to the libellants.

Sixth. This respondent further says, that he has no knowledge of the several matters contained in the seventh article of the libel, and therefore denies the same.

Seventh. This respondent denies that the libellants are entitled to the relief demanded by the libel, and, insisting that the matters in this answer contained are true, he prays that the libel may be dismissed with costs.

DAVID OGDEN.

E. H. Owen, *Proctor.*
F. B. Cutling, *Advocate.*

Southern District of New York.

Be it remembered, that on the 24th day of Jan'y, 1852, before me, a commissioner, &c., personally appeared David Ogden, who being by me duly sworn, did depose and say, that the foregoing answer by him subscribed is true, except as to those matters there-

in stated on information and belief; and as to those matters, that he believes it to be true.

CHAS. ELIOT SCOVILLE,
U. S. Com'r.

Endorsed: 9; 400. U. S. district court. David Ogden ads. Jotham Parsons et als. Answer. E. H. Owen, Proctor.
Filed January 26, 1852.

This charter-party, made and concluded upon in the city of New York the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-one, between McGaw, Foster & Co., agents of the ship "Hemisphere," of the port of New York, of the burden of one thousand and twenty (1,020) tons, or thereabouts, register measurement, now lying in the harbor of New York, of the first part, and David Ogden, of the second part, witnesseth, that the said party of the first part agrees, on the freighting and chartering of the whole of the said vessel, with the exception of the deck-cabin and necessary room for the crew and storage of provisions, sails and cables, or sufficient room for the cargo hereinafter mentioned, unto said party of second part, for a voyage from Liverpool to New York, on the terms following: The said vessel shall be tight, staunch and strong, and every way fitted for such a voyage, and receive on board during the aforesaid voyage the merchandise hereinafter mentioned, and no goods or merchandise shall be laden on board, otherwise than from the said party of the second part or his agent. The said party of the second part doth engage to provide and furnish to the said vessel a full cargo of general merchandise, and not exceeding five hundred and thirteen (513) second cabin and steerage passengers; the ship not to take exceeding her registered tonnage of iron; and to pay to said party of the first part, or agent, for the use of said vessel during the voyage aforesaid, fifteen hundred pounds sterling, free of commission; bills of lading to be taken in part payment; balance to be paid to the captain in Liverpool, in cash, before the sailing of the ship. It is agreed that the lay-days for loading shall be as follows, commencing from the time the captain reports himself ready to receive cargo—fifteen running lay-days; and that for each and every day's detention by default of said party of second part, or agent, one hundred silver dollars per day, day by day, shall be paid by said party of second part, or agent of said party of first part, or agent. The cargo or cargoes to be received or delivered according to the custom and usages at the ports of loading and discharging, the charterers to provide water, provisions and berths, medicines, and all other expenses connected with passengers, and to pay hospital and commutation fees in New York, and quarantine expenses, if any; all surplus stores provided by the charterers, remaining on arrival at New York, to belong to charterers. The ship to be allowed to furnish berths, and the charterers to pay the usual price per head to the

ship. The passengers' stores now on board the charterers agree to buy at their value in Liverpool. To the true and faithful performance of all and every of the foregoing agreement, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators and assigns, each to the other, in the penal sum of ten thousand dollars.

In witness whereof, we hereunto set our hands the day and year first above written. DAVID OGDEN.

McGAW, FOSTER & Co., *Agents.*

Signed in the presence of—

H. B. STEPHENSON, witness to the signature of D. Ogden.

H. HOLBRIDGE.

In Admiralty.

The replication of Jotham Parsons, Joshua Atkins, Edwin Atkins, and Joshua Atkins, jun'r, lblts., to the answer of David Ogden, respondent, to the libel of the libellants.

These repliants, saving and reserving to themselves now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say, that they will aver, maintain, and prove their libel and complaint to be true, certain, sufficient in the law to be answered unto, and that the said answer of the said David Ogden is uncertain, untrue, and insufficient to be replied unto by these repliants; without that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain and prove, as this honorable court shall direct; and humbly pray, as in and by their said libel and complaint they have already prayed.

BETTS & DONOHUE,
Proctors for Libellants.
W. R. BEEBE, *Advocate.*

Endorsed: 9; 400. U. S. district court. Jotham Parsons et al. vs. David Ogden. Replication. Betts & Donohue, Proctors. Filed June 24th, 1852.

U. S. District Court.

DAVID OGDEN
ads.
JOTHAM PARSONS.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

David Ogden, the defendant in the above cause, being sworn,

says, that this cause was at issue on the 24th day of January, 1852, and is upon the calendar for the present term of this court; that he has fully stated to F. B. Cutting, esq'r, his counsel in this cause, the facts which he expects to prove by John Cragg Taylor, and , a clerk in his employment, Alexander Taylor and James Wilson, all of Liverpool, England; that they are, and each of them is a material witness for the defendant in this action, and that without the benefit of their testimony he cannot safely proceed to the trial of this cause, as he is advised by his said counsel after such statement made as aforesaid, and verily believes to be true. Deponent further says, that the said witnesses do not, nor does either of them reside in the southern district of New York, but they reside at Liverpool, in the Empire of Great Britain. This deponent says that he has not been able to ascertain the names and residences of the said witnesses.

DAVID OGDEN.

Sworn to before me this 7th day of March, 1853.

KENNETH G. WHITE,
U. S. Com'r.

U. S. District Court.

DAVID OGDEN
ads.
JOTHAM PARSONS et als.

SIR: Please take notice, that upon the affidavit, with a copy of which you are herewith served, a motion will be made before the Honorable Sam'l R. Betts, judge of this court, at the City Hall, in the city of New York, on the 8th day of March, instant, at 11 o'clock in the forenoon of that day, that a commission issue in the above action to John Gates, jr., to examine upon oath the witnesses therein named on the part of the defendant.

March 5th, 1853.

Yours, &c.,
E. H. OWEN,
Respdts' Proctor.

Messrs. BETTS & DONOHUE,
Lblts' Proctors.

Endorsed: 9; 400. U. S. district court. David Ogden ads. Jotham Parsons et al. Aff. and no. of mo. E. H. Owen, respdts' proctor.

Filed March 9th, 1853.

I hereby admit due service of a notice, of which the within is a copy.

C. DONOHUE.

At a stated term of the district court of the United States of America for the southern district of New York, on Wednesday, the

ninth day of March, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the Honorable Samuel R. Betts, dist't judge.

DAVID OGDEN
ads.
JOTHAM PARSONS, JOHN A. MCGAW, JOSHUA ATKINS, EDWIN ATKINS, and JOSHUA ATKINS, jr.

On reading and filing affidavit, notice of motion and admission of service, and on hearing Mr. Owen, attorney for the respondent, Mr. Donohue, the proctor for the libellants, being present, it is ordered that a commission issue in the above entitled cause, on the part of the respondent, to be directed to John Gates, jun'r, of Liverpool, England, to examine on their corporal oaths or affirmation John Craig Taylor, and a clerk in his employment, also Alexander Taylor and James Wilson, all of Liverpool aforesaid, on interrogatories and cross-interrogatories to be annexed to the said commission, on the part of the said respondent, and that the commission when executed be returned, directed to the clerk of this court, by the usual mode of transmitting letters from Liverpool to the city of New York.

(Signed) SAM'L R. BETTS.

U. S. District Court.

DAVID OGDEN
ads.
JOATHAM PARSONS et als.

SIR: Please take notice, that a motion will be made on the thirtieth day of July inst., at 10 o'clock in the forenoon of that day, before the Honorable Samuel R. Betts, judge of the court, that a commission issue in this cause to L. B. Perry, esq., of the town of Bedford, in the Commonwealth of Massachusetts, counsellor at law, to examine upon oath, on interrogatories to be annexed thereto, Messrs. Hayden and Cudworth of said town, on the part of the respondent herein, and that all proceedings herein be stayed until the execution and return of the said commission.

Yours, &c.,
E. H. OWEN,
Proctor for Resp'ts.

C. DONOHUE,
Libell'ts' Proctor.

Endorsed: 9; 400. U. S. district court. David Ogden ads. Joatham Parsons. No motion for commission. E. H. Owen, proctor for resp'ts.

Filed August 1st, 1853.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Monday, the first day of August, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the Hon. Chas. A. Ingersoll, dist. judge.

JOTHAM PARSONS et al.
v.
DAVID OGDEN.

On reading and filing affidavits, and on motion of E. H. Owen, of counsel for respondent, J. Parsons, esq., of counsel for the libellants, appearing and consenting thereto,

It was ordered that a commission issue on behalf of the respondent, as prayed for in the notice of motion.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Friday, the ninth day of September, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the Hon. Saml. R. Betts, dist. judge.

JOTHAM PARSONS et al.
v.
DAVID OGDEN.
9; 400.

The clerk having this day received by mail the commission in the above entitled cause, ordered that it be opened and filed.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on the 3d day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the Hon. Sam'l R. Betts, district judge.

JOTHAM PARSONS et al.
v.
DAVID OGDEN.

The clerk having this day received by mail a commission issued in the above cause, ordered that it be opened and filed.

U. S. District Court.

JOTHAM PARSONS and als.
v.
DAVID OGDEN.

1854, June 20. This cause being called in its order on the calendar, ordered hearing. Mr. Donohue reads libel. Mr. Owen reads answer. Evidence for the libellants. The charter-party read. (see pages 9 and 59.)

William Whittlesey introduced, (sworn.)

Mr. Owens insists that the deposition of the witness which has been taken shall be introduced by the libellants.

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Witness examined. Sea captain; now reside at N. Haven; been a sea capt'n 30 years; am 55 years old; was captain of the Hemisphere; had been captain of her for over 2 years; was captain of her when the charter-party was executed; was capt'n of the voyage from Liverpool to N. Y. when the charter-party was in force; arrived in Liverpool some time in June, 1851; should think not far from the 10th; was ready to take in cargo on the 24th of June; gave notice to John Cragg Taylor, the consignee, that I was ready to take in cargo; that notice from the day before the 24th. The paper produced is a copy of the notice. I gave notice dated June 23d, 1851, (notice read, see p. 29;) received no cargo on the 24th; a load came alongside on the evening of the 24th; received it the morning of the 25th. The loading was completed the 3d or 4th July, as I should judge. I demanded of Taylor my demurrage; I demanded it after the 15 days were up. The notice of demurrage, dated 9th of July, 1851, introduced and read, (see p. 29;) sent notices, demanding demurrage, to the consignees; sent them every day except Sundays. A notice of the 10th of July, one of the 11th of July, one dated the 12th and 13th, July 14, 15, introduced and read, (see pa's 29 and 30.) Don't recollect the day exactly the loading was complete; may have been later than the 3d or 4th of July. The notices read were written the days they bear date. When I wrote them I was waiting for cargo and passengers; could not say how long I waited for cargo after the last notice. When I got in my cargo I went into the stream and took passengers; can't recollect date; don't recollect the day the ship sailed; could not tell how long after the last date that the cargo was shipped. I should judge that the last of the passengers came on board the day that I sailed. I think the Andrew Foster sailed the same day I did; think I could load the ship in 10 days. The ship furnished most of the provisions; made a list of the provisions furnished. There were provisions to the owners, to the charterers. My depth of water that voyage was nearly 19 feet. Have no interest in this suit. The ship paid the commutation money on our arrival at New York; Ogden would not pay it. The ship paid all the expenses. The deposition of the witness here read by libellants.

Witness recalled by libellant. I did not mean to state in the deposition that when the ship was launched her masts were in and every thing on board; after she was launched, arrived at Boston, where she had everything in.

Book shown the witness containing a list of passengers brought out.

Cross-examined. I did not make the charter-party; was not present at the time; don't know who negotiated the charter-party; don't know how much was realized from the freight; presume that the vessel collected the freight; the vessel came consigned to McGaw, Foster & Co.; don't know the amount of freight; list was

not absolutely necessary on the 24th of June to have any stiffening; don't consider it safe to lay at Liverpool without something; on the 24th had as much stiffening as was absolutely needed; some of the notices were in my handwriting; know them to be true copies; don't remember the day we discharged the last of our inward cargo; it was on Saturday, but could not get our jerk-note until Monday; some of the passengers come on board at the dock, then we got into the stream; more passengers came. Notes from Taylor to witness called for and not produced.

There were the names of some on the list of passengers which I did not bring; I thought I brought 362 or 363 passengers, but cannot state positively; don't know that the "Andrew Foster" sailed the same day with me; she was in the stream with me; took a pilotage bill in Liverpool; don't know where it is; delivered it to McGaw, Foster & Co., as I presume.

The note which I took for my interest in the vessel has not been paid; one year's interest has been paid.

Re-direct. The consignee usually gets the jerk note; the custom-house closed on Saturday before I got things discharged.

Re-cross. Duty of the consignee to get the jerk note at Liverpool; I was consigned to John Cragg Taylor; the vessel remained in the hands of the consignee; never took her out of the consignee's hands; it is the duty of the consignee of the cargo that I take to Liverpool to get the jerk note; the application for the stiffening note is on the part of the vessel; when we want a jerk note a custom-house officer examines to see that all is out, so that nothing can be smuggled; then, if every thing is right, a jerk note is given; a jerk note is never given till the cargo is all out.

Re-direct. Taylor and his partner were agents for Mr. Ogden; on the stiffening note we take in such cargo as offers, except dry goods.

William G. Hayward sworn. (Stevedore.) Have been 17 years in the city of New York; discharged the Hemisphere; it was stowed in the bottom and between decks; on top of the iron in the hold were crates and dry goods; between decks some iron, and some crates on the top of that; I discharged the ship by the ton; have discharged vessels of all kinds; think the vessel was properly stowed; it was not judicious to put more iron in the hold than was then put; if she had more weight in the hold and none between decks she would be so stiff as to be liable to roll away her masts; she might have had more weight in her if she had not passengers; but with passengers she had as much weight in the lower hold as was prudent, from my opinion, principally from the voyage previous; had discharged the ship on previous occasions.

Cross-examined. Have discharged her twice before this, I think; I know that I have once before; don't know now how much weight and measure she had on the voyage previous; don't know how

much she had in the lower hold on this voyage; I keep a book, in which I enter the amount discharged; that book will not show in what part of the ship the cargo was stowed; *I keep a book, in which I enter the amount discharged; that book will not show in what part of the ship the cargo was stowed;* I believe I now have that book; am not certain; I had some destroyed by fire; don't know how many passengers were brought; the bills which I rendered on the previous voyage would show how much I discharged; I rendered the bills to Captain Whittlesey; vessels stow their cargo with reference to the passengers; some of the cargo on the previous voyage was between decks, besides some iron; have different head men to discharge cargo; had a man by the name of Holt, and one by the name of Hollis.

Re-direct. The voyage on which she came home with 50 tons between decks was the voyage in which she was dismasted.

(James H. Lochman's deposition here read; see page 31.)

For respondent. Lafayette F. Harrison sworn. Clerk in surveyor's office. This is an office where the surveys of vessels are kept; there is a book, in which the measurement of vessels is recorded; Sept'r 2, 1851, the Hemisphere is recorded; it is in the handwriting of Mr. Croft.

Andrew Croft sworn. Measured in the custom-house in 1851–1853; remember the Hemisphere; examined her measurement in Sept'r, '51; the entry of measurement in the custom-house book is correct; is in my handwriting; the vessel was entitled to bring on that voyage, with the cargo she had on board, 430 passengers.

Cross-examined. Don't remember what part of the ship between decks was used for cargo; I think it was the end aft; when a diagram is made of the ship it appears how many passengers she is entitled to bring; the number of passengers she is entitled to bring is lessened by the space occupied by freight between decks; the whole space of the deck for passengers is 4,758; when she came in that voyage she had 951 feet of that space occupied by cargo; I think that cargo was in the after-part of the ship, but am not certain; have no recollection that there were any stores between decks.

Re-direct. The whole measurement between decks was 4,758 feet; deduct for cargo 951 feet, that space would allow 271 passengers. The measurement of the poop is 1,414 feet; that would give 101 passengers. The deck-house measures 392 feet; that would give 28 passengers. The state-rooms 84 feet; 6 passengers. The other rooms 336 feet, which gives 24 passengers. The whole makes 430 passengers for that voyage.

John Cragg Taylor's deposition, (under objection,) see pa. 34.

For libellants, to sustain the objection that Taylor, the witness, is interested.

William Whittlesey. I talked with Taylor about his interest.

For claimants. The deposition of Taylor read under objection taken August 20, 1853.

Alexander Taylor's deposition, (objected to,) see p. 40.
Henry F. Wilson's, do. 42.
John W. Shaw, do. 44.

Henry Holdridge (sworn.) In '51 was a ship broker in N. Y.; knew the Hemisphere; negotiated the charter with McGaw, of the firm of McGaw, Foster & Co. She was recommended by McGaw as a large carrying ship; that Taylor, of Liverpool, knew that she carried a very large cargo; that her number of passengers would be so many as mentioned in the charter-party. Don't recollect that anything was said as to where her cargo should be stowed.

Nicholas Holberton's deposition, (see p. 46.)

Nicholas Holberton, witness in addition, (sworn).

Cross-examined. Capt'n Whittlesey did not say to me in Liverpool that he would do all he could for the charterers; if the ship is in a loading berth, and ready to receive cargo, her lay-days commence. Don't recollect how many passengers I brought; our ship did not bring her full number of passengers; she brought all I had space for; I put cargo between decks, so that I could not bring the full complement; should say that I brought more than 425 passengers; brought about that number; her full complement was 513; the rate of passengers was very low, and I thought it more advantageous to take cargo between decks to ease the ship. Sailed from Liverpool on the 17th of July direct; a ship cannot receive cargo on board until she gets her jerk note, except as she may be authorized to receive some for stiffening purposes.

Samuel Samuels, (sworn.) Know Capt'n John Edwards; he is not now in the city of New York. He left for New Orleans 4 or 5 days ago.

John Edwards' deposition, (see p. 49.)

Eliph Hayden and Wm. M. Cudworth's depositions, (see p. 52.)

For libellant. Richard Poillon (sworn.) Shipwright; acquainted with the Hemisphere; have repaired her; very burdensome in the lower part of the ship.

Cross-examined. Don't know her depth; she went on the dock without her mainmast being in; not taken out for that purpose; I think she had in ballast; would be safer to put her on the dock with all her spars in and without ballast; I think that ballast was in when she arrived from Havre.

William H. Russell sworn. Shipmaster for 20 years; now in the Princeton; she is a three-decker, with 1,131 tons register; been in the Liverpool trade; know what a stiffening note is; under a stiffening note we take whatever we apply for permission to take; never knew the quantity to be limited to be taken in under a stiffening note; never chartered my ship; don't know when the lay-days commence; ready to take in cargo when I get a stiffening note; know the Hemisphere; was once *once* when she put back on a former voyage.

Question put to witness: What would be a proper quantity of iron to put in the lower hold of the Hemisphere? (Objected to.)

Answer. I would not be willing to put over 700 tons, and that should be well raised up from the bottom; we have to stow the iron very loose and open, to ease the motion of the ship; within the last year there has been a government officer appointed to look to this; I am always obliged to put iron between decks in my ship; cannot load her in any other way; the danger of putting a large quantity of iron in the hold is of dismasting the ship in a quick motion from the roughness of the sea; would not have been good judgment to have carried more than 900 tons of dead weight in the hold of the Hemisphere; I can carry only 800 tons in the Princeton. The Hemisphere is of less capacity.

Cross-examined. A stiffening note is permission to take in cargo to load the ship; it particularizes the cargo to be taken in; the master applies for that stiffening note; the application is made by letter to a proper officer; the object is to stiffen the ship so as to prevent her tumbling over; the note generally specifies the kind of cargo which is to be taken in; it is the universal practice to apply for these notes; under a stiffening order to take in iron the vessel could not take in dry goods. The jerk note is a note that shows that the ship has no inward cargo of every kind can be taken in. The stiffening note does not limit the amount to be taken in; it only specifies the kind that may be taken. When I get my stiffening note I take it to the dock office and book in it for an outward or loading berth, and have not to move from that berth till the ship is loaded and is ready for sea.

Stephen E. Glover sworn. Shipmaster; been shipmaster off and on for nearly 30 years; master in the Liverpool trade for about 15 years; know what a stiffening note ; it is a permission to take in goods at Liverpool; it is obtained, on permission, *to* the collector. An old captain, well known, can obtain it on his arrival at Liverpool. The stiffening note authorizes you to take on board what you apply for; is not limited in its amount. A jerk note is a certificate that no inward cargo is on board after examination and search. Sometimes a ship receives the cargo when the inward cargo is out. When the shipmaster notifies the consignee that he is ready to receive the cargo he receives it; and if not ready to put it on board, he puts it under a shed. A stiffening note is a permission to take your cargo on board; it is a permit to take in cargo; it supposes that the inward cargo is not all out. A stiffening note is given before all the inward cargo is taken out. A jerk note is when all the inward cargo is taken out. The captain can receive your cargo when he gets permission from the authorities—when he gets permission from the custom-house—when there is room in the ship. The ship is ready to receive cargo when the ship has a place to stow cargo, and has permission to receive it.

She is then ready to receive it. She can receive it in lighters without being ready to stow it. In Liverpool the lay-days commence whence the captain notifies the charterer that he is ready to receive cargo, provided he is ready. She is ready when she has a place on board to receive, and has a stiffening note. I knew the Hemisphere. Not prudent to put back little more than half of her register tonnage of dead weight in the lower hold without having some weight between decks. By placing weight between decks you can place more in the hold. If you did so, it would strain the ship; she would be liable to be dismasted. Not prudent to load her over 18 feet, bound to the westward. I would stow her iron in the hold cobble-fashion or cross-fashion open work.

Cross-examined. Two or 3 years since. I have been master for the last two years. Have been an inspector in a Marine Insurance Company. The object of getting a stiffening note is to secure early a loading berth. After obtaining a stiffening note the ship is often moved to another berth to load. If the vessel, after discharging her cargo, is ordered to another berth, he is obliged to go. On a stiffening note for iron you cannot take in dry goods. You can take in only what is named in the stiffening note. When the vessel is jerked you can take in all kinds of cargo. There is a law against taking goods under a stiffening note, other than those named in the note. I used to bring passengers. I used to stow cargo with reference to the passengers.

Oliver P. Brown sworn. Commander of vessels since 1818. 25 years in the trade between here and Liverpool. When I have an order to receive cargo, and get a stiffening note, the lay-days commence, as I suppose. Know of no custom in Liverpool by which the lay-days don't commence till we get the jerk note.

Cross-examined. Not now in the Liverpool trade; last left Liverpool in latter part of '48. I was in the Shakespeare and New York. Have sailed 17 years in my own vessels. From '38 sailed in my own vessel. The lay-days commence when the vessel is ready to receive cargo. If the master gives notice that he is ready and is not there, the vessel is not ready to receive cargo. By the term to receive cargo, I mean the right to take on board cargo. The lay-days commence when I have a right to receive a part of the cargo.

Re-direct. I get the stiffening note when I am ready to receive cargo; then the lay-days commence.

Stephen E. Glover recalled. All the custom I know in Liverpool is that the lay-days commence when you notify the charterers that you are ready to receive cargo, whether we are ready or not. The captain is the judge whether he is ready. I have not been in Liverpool since '40.

Joseph O. Barclay, (sworn.) Shipmaster; been in Liverpool once—not in the trade; lay-days commence when the captain gives

notice to the consignee that he is ready to receive cargo; the object is, that the ship be not detained. In all charter parties I have seen, there has been a proviso that lay-days commence when the captain gives notice.

Cross-examined. Left Liverpool last January; came there from the East Indies; was there about a month. If the vessel is not ready to receive cargo, I should say that the lay-days don't commence; know nothing about the custom of Liverpool.

Hugo B. Major (sworn.) Shipmaster since 1839; have been, previous to 1839, in the Liverpool trade; the lay-days commence when we notify the consignee that the ship is ready to receive cargo; have had lay-days allowed me from the stiffening note.

Cross-examined. Have had this done in Antwerp and in Havre. My vessel was chartered; can't tell the terms of the charter.

Wm. Whittlesey (recalled.) Know of no custom in Liverpool by which the lay-days commence when we get a stiffening note, and give notice to the consignee. The stiffening note was for iron, and for nothing else; can't tell how many days I was engaged in taking in iron. Taylor and I made an agreement to take 350 passengers. Taking her cargo and passengers, detained the ship till the 16th or 17th July, when she sailed. Loaded the ship about 1 foot deeper, by putting in cargo between decks.

Cross-examined. I can't say that the copies of manifest offered by Mr. Owen are true copies; presume that they are. (Mr. Owen offers the copies in evidence, and they are rejected.) Captain Holberton might have told me in Liverpool, that the lay-days did not commence till after the jerk note was given. Made the agreement with Taylor about the passengers in the street; Mr. Wilson was present; no one else present. This was some time before we sailed; it must have been before; I had taken in but little cargo. Most of my cargo in this voyage was taken in the lower hold; no cargo on the poop; none in the deck-house.

To the court. Received iron the day of the date of the stiffening note. The stiffening note was for railroad iron. More than ½ of the railroad iron was received after the ship was jerked; some crates were received prior to the time the ship was jerked. There was some railroad iron in a lighter when I got the jerk note; she came alongside probably the day before.

Cross-examined. Can't tell how much railroad iron I brought; can't tell how much other iron I received. I did not attend to the receiving of the cargo on board—my mate did. The crates were delivered before I got the jerk note; can't tell how many tons of iron was in a lighter that I have spoken of. The cargo to Liverpool *wall* all over the ship. The lower hold was full. On discharging cargo, discharge that between decks first.

Re-direct. Brought about 6 or 700 tons of dead weight in this voyage; it might have been 8.

For claimant. Samuel Samuels, (recalled.) Shipmaster for 8 years—last 2 voyages in the Liverpool trade. Lay-days, according to the custom in Liverpool, commence when the ship is discharged, not when she receives a stiffening note.

Cross-examined. Never was to Liverpool in a chartered ship; the ship that I command belongs to David Ogden. Commence taking in when a part of my cargo is out. In Liverpool, am allowed to put in where there is a clear space.

1854. June 22. Mr. Donohue argues the cause for the libellants.
22 and 23. Mr. Owen " " " respondents.
23. Mr. Parsons " " " libellants.

Cur adv. vult.

U. S. District Court.

JOTHAM PARSONS, &c.
vs.
DAVID OGDEN.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

William Whittlesey, produced and duly sworn as a witness on behalf of the libellant, testifies:

Am 53 years of age; reside in New York; seafaring man; going to Massachusetts and Maine this afternoon; uncertain whether I return this winter. Was captain of the ship Hemisphere in the summer of 1851—in April, 1851, and from that time until about the first of January last. I know the defendant, David Odgen, in this suit. The charter-party is here shown to witness, marked Exhibit A; admitted by deft's counsel. The witness says, I was captain of the Hemisphere at the time this charter-party was made, and performed the voyage therein agreed to be made, to Liverpool and back to New York. We arrived in Liverpool in the fore part of June, 1851, or thereabouts. On the 24th of June, *of* or the day before, *it* gave notice to the consignee of the ship, John Cragg Taylor, that the ship would be ready to receive cargo at 12 o'clock on that day, the 24th day of June. She was ready at that time. We had permission from the custom-house to take on board some cargo on that day, and on the twenty-fifth day of June we commenced to take on board railroad iron, and on the 28th day of June got all of the cargo out, and on the 30th got her jerked. I mean by that, she was cleared at the custom-house of her inward cargo. It is customary before the whole of the inward cargo is discharged to take in freight to stiffen the ship, and in this case we cleared out one part of the ship and was ready to receive any freight that might be offered. We take in iron or heavy goods first, and receipt for all goods delivered on the quay. On the 24th and 25th, and afterwards, we were ready to receive and receipt for all goods that might offer, and on the 25th did receive a lot of railroad iron. The ship was loaded in twenty-three or twenty-four, it may

be twenty-five days from the day that Mr. Taylor was notified that the ship was ready to receive his cargo, when the fifteen days were up from the 24th of June, and gave written notices to Mr. Taylor demanding $100 day by day as demurrage until the ship was loaded, except that on the Monday occurring I demanded $200 for that and the previous day. I have not the notices here; I gave them to Mr. Samuel M. Parsons. Mr. Taylor said he had received the notices, but did not consider them anything, and said he thought I was more formal than was necessary. No demurrage was paid.

The ship sailed some time in July, about the 18th I think; the log-book will show.

We could have loaded the ship easily in ten days from the 24th of June, when I gave the notice that she was ready for cargo.

The ship had 362 or 363 passengers, and drew 18 feet ten inches; that was not her full complement. It was the complement, or 12 or 13 more than the complement, agreed upon with Mr. Taylor. Mr. Taylor told me to leave room for 350 passengers, and put up the berths for that number. *Allow* berths were then down. We went below (Mr. Taylor and myself) between decks, and Mr. Taylor instructed me to put cargo between decks, and measured off the space for cargo and space for passengers.

Mr. Taylor thought that by putting cargo between decks that the ship could be loaded a foot deeper than she could be with a full complement of passengers, and that the additional freight would pay better than passengers, as passengers were very scarce. He made his figures upon the point, and came to that conclusion. Mr. Taylor said that as we had stores enough, or about enough for 350 passengers, it would be better to take that number only, as he would not have to get any more.

The ship was never loaded over 17½ feet before; that was her depth when dismasted the voyage before. I was in her at that time. I had some talk with Mr. Taylor before this charter-party was made, and told him that the ship could not be loaded so deep as she was on that voyage; that it would not be safe unless cargo was put between decks. The ship was loaded, on her return from Liverpool, as deep as was safe for her. I did not know of more passengers than the 352 or 353 being tendered to the ship. I took all that was offered me. Mr. Taylor knew all about the dismasting the previous voyage.

Mr. Taylor instructed me to put the cargo between decks and take only 350 passengers. When the ship arrived in New York, Mr. Ogden refused to receive the passengers, or to pay the head or commutation money, or to have anything to do with the passengers. The ship furnished the most of the provisions used by the passengers; these provisions were on board the ship, and were to be taken at their value by the charterers; the value of the provisions was as

per statement, Exhibit B. The principal down in the statement are what I was offered by a grocer in Liverpool for them after a personal examination of them by him. He was the same person that I bought them of the voyage before, and he offered me those prices for them; this is the statement made by him. The quantities I presume are stated; I know that the quantities were about as put down there, and have no doubt they are correct. Those provisions were used by the passengers alone on the voyage. The remainder, on our arrival at New York, were delivered to Mr. Ogden, all that were left. The ship paid the commutation and the permits, and all expenses. The cargo was well *sotred*. The cargo could not have been stowed differently, so as to have admitted a larger cargo, with safety to ship, of the same kind; I would not take so large a cargo again, nor load the ship so deep again with the same cargo.

Cross-examined. I was formerly part owner of the Hemisphere; I was part owner at the time the charter-party in this case was made, and have been a part owner of her ever since. I first commanded her when she was built, about three years ago; she had made, I think, two voyages before she went to Liverpool this time—one or two; they were to Liverpool. She registers 1,020 or 1,030 tons; she is a good carrying vessel. I had for cargo on the voyage to Liverpool—at the end of which this charter commenced—grain, cotton, maple wood; we had a full cargo. I don't recollect how much water she drew, on that voyage; I think she would draw when full, from here, some 18 feet and 4 or 5 inches. I should not hesitate to load her deeper than that, to fill up between decks and all; she would be very deep to be 19 feet. I should not like to load her so deep; I don't recollect her actual depth; I never measured her; I should think she was 21 feet. I don't recollect when we arrived at Liverpool on the voyage previous to the commencement of this charter; can't tell how long after the vessel arrived there before she was entered at the custom-house; I can't tell the day we commenced discharging her cargo; gave notice that the ship was ready to receive cargo to Mr. J. C. Taylor, the consignee of the ship; the notice was in writing; it was not written by me; it was written by a lawyer there; it was sent on the day it bore date; I am not sure it was sent on the day we told him therein that the vessel would be ready, or the day before; I did not deliver that note; I knew it was delivered, because Taylor told me he had received it; I can't tell what portion of the cargo had been discharged when this notice was given. It took me part of two days to discharge the rest of the cargo; I don't recollect how many days we had then been engaged discharging; I can't tell what part of the cargo was still in; the "jerk note" was obtained from the custom-house on the 30 June; a "jerk note" is a certificate of the custom-house that the vessel is cleared of her inward cargo. I had a permission to receive cargo

before the jerk note was given; it was in writing; I obtained it from the custom-house; don't recollect the date of it; it was delivered to the custom-house officer having charge of the ship. The ground of my application for this permission was, that the ship would not stand without ballast, and it was necessary to take in some cargo to stiffen her. This note or permission is called a "stiffening note;" this note was given in part for the accommodation of the ship; the ship did stand when she was launched without any stiffening, but I don't consider it safe for any vessel to stand without stiffening; she was then, when launched, fully rigged—boats on deck. The vessel was built in Medford, Massachusetts, by Haydon and Codworth; I superintended the building of her. McGaw has a copy of the contract, that will show the depth of the vessel.

The first notice that was given, that the ship claimed demurrage, was on the 9th July. This was the first day for which demurrage was claimed; the ship cleared the 17th July, I think, and sailed on that or the next day. The cargo consisted of iron and tin—the heavy part of it; we had also crates; I don't recollect how much iron the vessel had; I can't say, but think she had nearly her register of iron; I should think she had over 900 tons of iron. Iron first came on board, and it was stowed in the bottom of the ship; some of the iron was stowed in the between-decks; can't say how much was stowed in the between-decks; there was room enough in the lower hold to have stowed the whole of the iron there if it had been stowed solid. When we made the charter, we intended to bring the iron in the lower hold, and to fill it up to the deck; in the room of that we had crates, and we were obliged to stow the iron closer, and put crates on top of iron; don't recollect how much cargo the vessel had in the lower hold, besides water and provisions for 500 passengers. On the first voyage of the ship from Liverpool, I think we had not over 1,400 tons of iron and general cargo at that time, besides the water and provisions for 500 persons; I don't think we had 600 tons of iron in the lower hold. We had about 50 tons of lead on deck when we left the first time, and after the vessel returned dismasted we put on about 50 tons more.

Ques. How much cargo had you between decks on the voyage under the charter in controversy?

I cannot tell how much there was; we measured off the room for the passengers, and took in iron and stowed it forward and aft, and put the stores on top of the iron aft, and crates on top of the iron forward, up to the deck. We hada great many crates in the lower hold; we had not the iron in time—I mean we had it not in time to take it in; Mr. Taylor made an arrangement with me to take only 350 passengers—to put iron and crates between decks; this arrangement was made with Taylor when the ship was partly loaded; don't remember the day; can't tell exactly where the ar-

rangement was made, but think it was made at Pilkington's office, but it was talked of on board the ship; it was not in writing; I can't say that any one was present; it was talked of before Mr. Wilson, of the firm of Pilkington & Wilson, the person who got the passengers.

I think the stevedore's name was Scroggins. I received one or two notes from Mr. Taylor while there; I think I have them, but I have not got them here; I will endeavor to produce them. I think one related to the loading the ship, saying that if I did not load the ship to a certain draft of water, he would abandon the ship; I don't recollect the draft he mentioned. I don't think he notified me that he would have a full complement of passengers; I never was notified to that effect by any one. I received two letters while there from Taylor, but don't recollect their dates. Taylor was aboard of the vessel frequently when I first got ir; he was on board sometimes when discharging and loading, but the last of the loading he was on board a number of times. The first and last times I generally saw him, but along in the middle I did not; he used to try to come aboard when I was not there; I was told that he was aboard at those times. Taylor and I did not agree in the middle of the time; the first and last we agreed. He never objected to my knowledge to the manner which I was loading the iron; no one else to my knowledge objected. I never said "I did not care what was said; I would load the vessel as I pleased;" I always said I would load her properly.

Q. Was any iron tendered to the ship which you refused to take?

After the ship was so near full, being the day before I hauled out, I was told that he, Taylor, had 50 tons more of railroad iron to put on board; I answered, that the ship was so near full that I could not get it in, but I could take crates, and he gave me them instead.

How could you take crates, if you could not iron?

The iron being in long pieces, there is not room to take in long iron when the cargo is loaded near to the decks, when we can crates, and roll them upon top.

Ques. Could you have accommodated more than 353 passengers, allowing them 14 feet each, on that voyage?

I don't think we could.

Ques. Why?

Because we put in freight and stores in the room of passengers.

Ques. Did you give Mr. Taylor any written answer to the notes received by you from Taylor?

No; I saw him verbally. I did not tell Mr. Taylor that I had a charter-party different from his. I did not bring any passengers on my own account—that is, steerage passengers. I delivered all the stores that were left on arrival here; I can't tell if it was all

mentioned in the list furnished by Mr. McGaw; I did not attend personally to delivering them stores; the mate attended to it; I ordered him to deliver them. The largest weight and scales are the hand steel-yards; one weighing 150 pounds or more, and the other smaller.

When you noticed Taylor of the claim for demurrage, did he not insist that the lay-days did not commence until the vessel was "jerked?"

There was something said about it, but what it was I cannot tell.

Direct Examination resumed.

I laid claim for seven days' demurrage; that was the number of days over the lay-days that the ship was detained by Mr. Taylor. I do not own any part of the claim for which this suit is brought; I am not liable for any costs; never promised to pay any. I owned an eighth of the ship when this claim accrued, and $\frac{1}{8}$ of this claim. I sold my eighth of this claim to Jotham Parsons; it was before the commencement of this suit; there was a writing passed on the subject. I was paid for my part of the claim. I have no interest in this claim.

When I said the ship could not be loaded safely to 18 feet, I meant that if the cargo was of iron and the like, and was put into the lower hold, she could not be safely loaded to that depth.

I have refreshed my recollection from original minutes made by me, and find that it was for the 24th of June that I notified Mr. Taylor that the ship would be ready to receive her cargo.

I have been a sea captain for over 20 years.

Question. As a general custom, when do the by-days commence?

As soon as the ship is ready to receive cargo, and notice is given of the fact.

Question. When this notice was given, could you receive all the cargo that might be offered? Had you space for it?

We could receive, but could not take in dry-goods until the vessel was jerked. We could receive iron to any extent as fast as it should come; the stiffening note does not limit the quantity.

I never knew iron to be stowed away solid in the lower hold; it would not have been safe in our case to have done it.

Cross-examined. I don't recollect the date when I sold my interest in this claim. The assignment was in writing, (the assignment is called for by resp'dt's proctor, and is not produced.) I received $400 in a note of Mr. Parsons, payable on demand. I have not demanded payment. I did not sell this claim in order to become a witness in this action. I could not be here, and I wanted to get rid of it and clear up my voyage. I have not collected it because I do not want it. There was no understanding, that if this suit failed the note was not to be paid. I was to have my

money any time I called for it. I think we are not allowed at the port of Liverpool to take in cargo until we receive the jerk note, except it be for stiffening. Cargo received before the jerk note is obtained has to be put under a shed, and I presume it cannot be received aboard before the jerk note is received.

(This witness is objected to as incompetent by resp'dt's proctor.)

WM. WHITTLESEY.

Sworn before me, the 2d Dec., 1852.

JOSEPH STRONG,
Com'r of Deeds.

Endorsed: U. S. district court. Jotham Parsons and al. vs. David Ogden. Dep. of Capt. Whittlesey. C. Donohue, lib. proctor.

To Mr. John Cragg Taylor, and to the said John Cragg Taylor and James J. James, of the firm of Taylor & James, Liverpool:

On behalf of myself, as master and part owner, and of the rest of the owners of the ship "Hemisphere," of New York, now lying in the Prince's dock, in the port of Liverpool, I hereby give notice to you, and each of you, as the charteret or charterers of the said ship for a voyage from this port to New York, that the said ship will be ready to receive cargo and passengers pursuant to the charter-party, at twelve o'clock at noon to-morrow, Tuesday, the 24th of June, instant, and that the days allowed by the charter-party, executed by you or on your behalf, will be reckoned from that day; and I further give you notice, that if the said ship be not loaded pursuant to the charter-party, within the time thereby allowed for the purpose, I shall proceed forthwith to load a cargo on board, or otherwise employ the said ship, on account or for the benefit of myself and the other owners, and that you and each of you will be held liable and responsible for all loss, damages and expenses occasioned by your failure to comply with the terms of the said charter-party, on the part of the charterer or charterers to be observed and performed. Dated this twenty-third day of June, one thousand eight hundred and fifty-one.

WM. WHITTLESEY.

To Mr. John Cragg Taylor, and to the said John Cragg Taylor and James J. James, of the firm of Taylor & James, Liverpool:

On behalf of myself, as master and part owner, and of the rest of the owners of the ship Hemisphere, of New York, and lying in the Prince's dock, in the port of Liverpool, I hereby give notice to you, and each of you, as the charterer or charterers, or agent or agents of the charterer of the said ship for a voyage from this port to New

York, that the fifteen running lay-days allowed by the charter-party, dated the twenty-eighth day of April last, for the loading of the said ship, will expire on the tenth day of July, instant, and that demurrage at the rate mentioned in the said charter-party will become payable for each and every day's detention of the ship after the time last mentioned. Dated this ninth day of July, one thousand eight hundred and fifty-one.

WM. WHITTLESEY.

To Mr. John Cragg Taylor, and to Messrs. Taylor & James, Liverpool:

GENTLEMEN: As master and part owner, and in behalf of the rest of the owners of ship Hemisphere, I hereby demand payment of one hundred silver dollars demurrage, due in respect to the detention of the said ship at this port, pursuant to the charter-party of the 28th of April last.

Liverpool, July 10, 1851.

Yours, respectf'y,

WM. WHITTLESEY.

To Mr. John Cragg Taylor, and to Messrs. Taylor & James, Liverpool:

GENTLEMEN: As master and part owner, and in behalf of the rest of the owners of the ship Hemisphere, I hereby demand payment of one hundred silver dollars demurrage, due in respect to the detention of the said ship at this port, pursuant to the charter-party of the 28th of April last.

Friday, the 11th of July.

I am, gentlemen,

WHITTLESEY.

To Mr. John Cragg Taylor, and to Messrs. Taylor & James, Liverpool:

GENTLEMEN: As master and part owner, and in behalf of the rest of the owners of the ship Hemisphere, I hereby demand payment of two hundred silver dollars damage for Saturday and Sunday, due in respect to the detention of the said ship at this port, pursuant to the charter-party of the 28th of April last.

July the 12th and 13th.

I am yours, with respect,

WHITTLESEY.

To Mr. John Cragg Taylor, and Messrs. Taylor & James, Liverpool:

GENTLEMEN: As master and part owner, and in behalf of the rest of the owners of the ship Hemisphere, I hereby demand payment of one hundred silver dollars damage, due in respect to the deten-

tion of the said ship at this port, pursuant to the charter-party of the 28th April last.

Yours, with respect,
WM. WHITTLESEY.

Monday, July 14, 1851, at Liverpool.

Mr. John Cragg Taylor, or Messrs. Taylor & James, Liverpool:

GENTLEMEN: As master and part owner, and in behalf of rest of the owners of ship Hemisphere, I hereby demand payment of one hundred silver dollars demurrage, due in respect to the charter-party of the 28th April last.

Truly, yours,
WM. WHITTLESEY.

Liverpool, July 15, 1851.

UNITED STATES OF AMERICA,
Southern district of New York,
City, county, and State of New York, ss.

Be it remembered, that on this twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-one, I, Joseph Bridgham, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenint taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, in the city of New York, in the said southern district of New York, in the State aforesaid, James H. Lockman, to testify and the truth to say, on the part and behalf of the libellants, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, wherein Jotham Parsons et al. are libellants, against David Ogden, respondent.

And the said James H. Lockman, being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James H. Lockman, and he did thereupon depose, testify, and say as follows, viz:

I am a sea-faring man, and am bound on a voyage to Savannah, more than one hundred miles from New York; I leave this after-

noon. I reside in Brooklyn, N. Y. I was mate on board the Hemisphere on her last voyage from Liverpool to New York. I know John C. Taylor, of Liverpool. After our arrival at Liverpool I heard a conversation about the number of berths to be put up. Mr. Taylor said he wanted berths for three hundred and fifty; fully that number were put up, and some to spare; I don't recollect how many. I don't know any notice being given that the vessel was ready to receive cargo; don't know of any being written to be sent. She was ready to receive cargo on the 24th of June. The cargo commenced coming on board on the 25th June; on referring to the log-book, witness says, on the 14th of July we got through taking in cargo; the last of the passengers came on board on the 16th of July. I don't know of any cargo offered or sent to the vessel which was not received. The vessel was 18 feet 10 inches deep when she was ready to leave Liverpool; no other passengers were sent on board or offered, excepting those we took. Have been to sea 23 years. I think the ship was deep and properly loaded, as she was loaded for her burden. The ship furnished the stores to passengers. I weighed the stores myself; no person was present, excepting those who helped me. The list produced, marked Schedule "A," is a list of the stores which I weighed and measured. The ship furnished the materials for the berths; I don't know who furnished the water. The coal and wood the ship furnished; don't know the quantity. The ship furnished the cooking irons. The medicine was furnished by the ship. The rest of the room over that occupied by the 350 passengers was to be used for cargo.

Cross-examined. Have been mate of this ship only this one voyage, out and back; we arrived at Liverpool the 12th of June. The cargo out was corn, cotton, and wheat; we commenced discharging cargo at Liverpool on the 17th of June, and ended on the 28th of June; had crates and casks—some stowed in the lower hold, and some between decks. I don't know the tonnage of the ship; she draws, loaded, 18 feet 10 inches—I mean coming home.

Q. Did you take her measurement at Liverpool after she was loaded—I mean her draught of water?

A. I took her draught of water; it was 18 feet 10 inches; I did not look at her draught on arriving at New York.

Q. How much did she draw on her outward passage, when she left New York?

A. I don't recollect.

Q. What is her build on her bottom?

A. She is full.

Q. Will she stand without ballast?

A. I should think not.

Q. How many passengers did you bring out?

A. 362, I think, children and all.

Q. Were the stores mentioned in schedule A purchased at Liverpool?

A. No, they were old stores which we took out in the vessel.

Q. Is schedule A the original entries?

A. No, it is copied from the weights I took down in the book.

Q. What book was that, and where is it?

A. It is at my home, in Brooklyn; it is an old cargo book; the entries were made in it by myself.

Q. Upon your arrival in New York, did you furnish a list of stores remaining on board?

A. I gave a list of the stores expended on the passage to the captain.

Q. From what did you take that list?

A. From a memorandum of the provisions consumed which I kept on board; I left the vessel immediately after her arrival.

Q. Did not Mr. Taylor send some stores on board at Liverpool?

A. Yes, sir, he sent 1 chest of tea and 4 barrels of sugar; don't recollect anything else.

Q. Do you know where the original list of provisions consumed now is?

A. I do not; I left it on board the vessel. There is no entry of the depth of water the vessel drew when she left Liverpool; I am not mistaken in her depth being 18 feet 10 inches. I did not attend to the discharging the vessel here in New York.

Re-direct. We received the cargo at Liverpool as fast as we could take it in.

J. H. LOCKMAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 20th day of October, 1851, before me.

JOSEPH BRIDGHAM,
U. S. Com'r.

List of passengers' stores on board ship Hemisphere, Liverpool, July, 1851.

16 barrels flour; 74 bags oatmeal, 17,005 lbs.; 86 bags bread, 9,798 lbs.; 28 bags rice, 6,531 lbs.; 5 casks molasses, cwt. 26 2 16; 1 bbl. vinegar; 38 gals.; 2 bbls. sugar, 510 lbs.; 4 chests tea, 320 lbs.

Schedule A referred to in the annexed deposition of John H. Lockman.

JOSEPH BRIDGHAM,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, Joseph Bridgham, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail

in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is bound on a voyage to Savannah, more than 100 miles from the city of New York. I further certify, that a notification of the time and place of taking the said deposition signed by me was made out and served on the proctor for the respondent to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify, that on the twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-one, I was attended by and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the court for which the same was taken. And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

JOSEPH BRIDGHAM,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern district of New York, in the second circuit.

Vol. 9, No. 400. United States district court, for the southern district of New York. Jotham Parsons et al. v. David Ogden. Deposition on the part of the libellants, taken before Joseph Bridgham, United States commissioner, on the twentieth day of October, 1851.

Filed the 23 day of October, 1851. Dep'n of James H. Lockman. 18 fo.

Depositions of witnesses produced, sworn and examined, the twentieth day of August, in the year one thousand eight hundred

and fifty-three, at the office of Mr. John Yates, junior, solicitor, 20 Fenwick street, Liverpool, in the county of Lancaster, and Kingdom of England, under and by virtue of a commission issued out of the district court of the United States of America, for the southern district of New York, in a certain cause therein depending and at issue between Jo*lt*ram Parsons, John S. McGaw, Joshua Atkins, Edwin Atkins, and Joshua Atkins, jun'r, libellants, and David Ogden, respondent, as follows:

John Cragg Taylor, of Liscard, in the county of Chester, in England, book-keeper, aged twenty-nine years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the respondent, doth depose and say, as follows:

First. To the first interrogatory he saith: I am twenty-nine years of age, and reside at Liscard, near Liverpool, and my occupation is that of a book-keeper for Messrs. Bowman, Grinnell & Company, of Liverpool, merchants. I know the libellants, Jo*lt*ram Parsons and John S. McGaw, slightly, and I know the defendant, David Ogden, very well; I do not know any of the other parties; I have no interest in the event of this action.

Second. To the second interrogatory he saith: I was consignee of the ship "Hemisphere," on her arrival at Liverpool, in June, one thousand eight hundred and fifty-one. She arrived on Thursday, the twelfth day of June, one thousand eight hundred and fifty-one. She arrived on Thursday, the 12th day of June, one thousand eight hundred and fifty-one. She commenced discharging her inward cargo, to the best of my belief, about the sixteenth day of June, and finished discharging it on the thirtieth of the same month.

Third. To the third interrogatory he saith: The "Hemisphere" commenced taking in cargo before she finished discharging. It was taken on board to stiffen the ship, in order to enable her to finish discharging. On the twenty-third day of June, one thousand eight hundred and fifty-one, I received a notice from Captain William Whittlesey, of the "Hemisphere," and which is hereto annexed, marked with the letter A, that the ship was ready to receive cargo. A stiffening note was, I believe, obtained by the captain from the custom-house, but I have not got it. The vessel had not then obtained a jerk note. She got a jerk note on the thirtieth day of June, one thousand eight hundred and fifty-one. The vessel had no right to take in cargo for an outward return voyage, before such jerk note was obtained, except for the purpose of stiffening her. I had no copy of the jerk note obtained for the "Hemisphere," but I have searched at the Liverpool custom-house and find it was issued on the day above stated.

Fourth. To the fourth interrogatory he saith: I attended the loading of the "Hemisphere," on her return voyage. I had not

loaded the "Hemisphere" before, but had been in the employment of Messrs. A. Taylor & Company, when she had been loaded by them. The "Hemisphere" could not safely discharge all her inward cargo, in my judgment, without taking in some dead weight to stiffen her, and I was so informed by Captain Whittlesey; and in my judgment she could not stand alone without such stiffening. No cargo was taken on board of her at the time she was at Liverpool in June, one thousand eight hundred and fifty-one, before she obtained her jerk note, except for her convenience as stiffening, nor would this be allowed by the customs. She was not ready to receive her return cargo before she obtained her jerk note.

Fifth. To the fifth interrogatory he saith: The lay-days, by the usage and custom of Liverpool, usually commence at the time a vessel obtains a loading berth, and a ship cannot get a loading berth out until she has obtained her jerk note, and it is not at the time a vessel receives cargo under a stiffening note that her lay-days begin, as that is done for the convenience of the ship; but after the jerk note is obtained, it is not usual or customary whilst there is inward cargo in the ship, and before the jerk note is obtained, to give notice under the charter-party that the vessel is ready to receive cargo, or that the lay-days have commenced.

Sixth. To the sixth interrogatory he saith: On the nineteenth of June, one thousand eight hundred and fifty-one, I notified Capt'n Whittlesey, the master of the Hemisphere, that I had arranged for his full complement of passengers, and I sent him on that date a letter, of which I annex a copy marked with the letter B, and I also, about the same date, verbally informed him that I was ready to furnish him with his registered tonnage of iron, as per charter-party, for his return voyage. I annex copies of two other letters, dated, respectively, the twentieth and twenty-fourth days of June, one thousand eight hundred and fifty-one, sent by me to Capt'n Whittlesey, marked respectively with the letters C and D; and I annex also five notes, dated, respectively, the ninth, tenth, eleventh, twelfth, thirteenth and fourteenth, received by me from Capt'n Whittlesey, and marked respectively with the letters E, F, G, H, and I. I know that he received all the letters sent by me to him, as he so admitted to me in various conversations. I cannot state all that took place between us in reference to loading the ship, as we had constant discussions upon the subject; he refused to load the ship according to the charter-party by putting her registered tonnage of iron in her lower hold, and his full complement of passengers, alleging that he dare not go to sea with his registered tonnage in his lower hold, whilst I insisted upon his loading according to the charter-party; and ultimately, before I was aware of it, he had put part of the cargo, consisting of railroad iron, which was intended for the lower hold, in the between-decks, thereby cutting off part of the space intended for passengers.

Seventh. To the seventh interrogatory he saith: I read the charter-party of the voyage inquired of; I never consented in any manner to vary the terms and conditions of that charter-party, or any of them; I required the master to fulfil the charter-party on his part. I wanted to load the ship to eighteen feet, and should have been satisfied with that at the time, but Capt'n Whittlesey refused to go to eighteen feet on the ground that the ship was never loaded to that depth before, and that on a preceding voyage, when she lost her masts, she only drew seventeen and a half feet. I proposed several times verbally to leave the question as so draught of water to arbitration, and I afterwards repeated this offer in substance, in my note of the 24th June, 1851; but Capt'n Whittlesey refused to leave the question to arbitration, and said that he would load my ship as he thought proper, being, as he stated, the most competent judge as to how his ship should be loaded.

Eighth. To the eighth interrogatory he saith: A portion of the iron was stowed in the between-decks, and a portion in the lower hold. I do not now remember that any other cargo was stowed in the between-decks; she did not take as much in the lower hold as she might have done; she was never before loaded by me, but she had previously been loaded by Alexander Taylor & Co., whilst I was in their employment and held the shipping department, and on that occasion she took much more in her lower hold, together with her full complement of passengers, than she did in the voyage of controversy. I did object to the manner in which Capt'n Whittlesey was loading the ship; I told him that he was raising his iron too high, and he replied that he was obliged to do so for the safety of the ship. On the previous voyage, when she was loaded by Alexander Taylor & Co., she carried, when she first sailed, as I have ascertained from reference to Taylor & Co.'s books, 733 tons of dead weight, and 618 tons measurement goods, all in her lower hold, and she carried, besides this, her full complement of passengers. On her return voyage in July, 1851, she carried 923 tons dead weight, and three hundred and seventy-four tons measurement, together one thousand two hundred and ninety-seven tons. On this voyage her cargo consisted of seven hundred and forty-nine tons seven cwt. three quarters and five pounds of railway iron; one hundred and forty-five tons six cwt. and sixteen pounds bands and bundles, and twenty-eight tons fifteen cwt. of tin, which was all the dead weight the ship had; the three hundred and seventy-four tons measurement goods including crates of earthenware, &c. A considerable portion of the cargo of iron was carried between decks on this voyage, but I cannot remember whether any other part of her cargo was carried in her between-decks. The whole of that portion of her cargo which was carried in her between-decks could have been carried in her lower hold.

Ninth. To the ninth interrogatory he saith: The master did re-

fuse to receive a quantity of iron which was tendered to him for the voyage in question; I cannot state the particular time he refused, but it was a short time before the ship sailed; I had engaged a quantity of crates and also a quantity of iron, both rails and bars; he took the crates, but refused to take the iron; the reason that he assigned was, that the ship would not be safe to go to sea if she took any more iron; if no cargo had been stowed between decks she would have had room to carry 513 passengers, according to her charter-party, and she carried this number on the voyage of which I have before spoken, when she was loaded by Alexander Taylor & Co.; but with the cargo which she had stowed between decks she had only room for three hundred and fifty passengers. I never went on board with the master and measured off the room for three hundred and fifty passengers, but I went on board with him and saw that he had put cargo in the between-decks, and left only space for the three hundred and fifty passengers; I never gave the master permission to put cargo between decks.

Tenth. To the tenth interrogatory he saith: I have already stated substantially what the master said upon the subject; he told me he would load the ship as he pleased, and he did so without consulting me; he repeatedly told me he did not care a fig for me, as his charter was signed by David Ogden, who was quite good enough for him. I do not remember that the master ever said he would take as little cargo as he could, or to that effect, but he did refuse to take his registered tonnage of iron in the lower hold. I did object to the manner in which he was loading the ship, as being contrary to the charter-party. I had an offer of some salt, but the master said he could not take it; and, to the best of my recollection, the reason assigned was that the ship was loaded. The vessel drew on the return voyage nearly eighteen feet, to the best of my recollection; on the previous voyage, of which I have spoken, she drew eighteen feet.

Twelfth. To the twelfth interrogatory he saith: I was not engaged in the business of procuring and shipping passengers for America in June, one thousand eight hundred and fifty-one. I had laid on the ship for passengers, who were engaged by regular passenger brokers. The rate of fare on the ninth of that month for second cabin and steerage passengers was from two pounds five shillings to two pounds ten shillings for steerage passengers, and from three pounds to three pounds ten shillings for second cabin passengers. To the best of my belief the passengers' brokers could have filled the "Hemisphere" at those rates; but, as I have said before, I was not engaged in the business of procuring and shipping passengers, this being a business exclusively carried on by licensed brokers. I engaged none of the passengers by the "Hemisphere." All the passengers engaged for the vessel were not received on board, because there was not room for them. I cannot

tell how many were engaged who were not received. The remainder of this interrogatory does not appear addressed to me.

Lastly. To the last interrogatory he saith: By the charter the ship was bound to carry her registered tonnage of iron, and her full complement of passengers, five hundred and thirteen, and I offered to load her according to her charter, and should have put her registered tonnage in her lower hold, and then she could also have carried her full complement of passengers; but the master refused taking her register tonnage of iron with her full complement of passengers, and said he would load the ship as he pleased; that he would not be safe with her registered tonnage of iron in her lower hold, and he thereupon put a portion of her cargo in the between-decks, thereby occupying the space intended for passengers.

First. To the first cross-interrogatory he saith: I had an interest in the charter, upon which this action is brought, at the time of its execution. In fact it was made for me. I have not any interest now in the said charter. I did agree with John A. McGaw to charter the said ship before the charter with Mr. Ogden was formally entered into. The charter executed by Mr. Ogden was made on my account. I am not now liable to Mr. Ogden for any moneys he may pay on account of said charter. He did charter the ship for me, and at my request. I have not paid him the full amount claimed of him by the owners of the ship on account of said charter. I did not, to the best of my belief, draw part of the ship "Hemisphere" passenger money, and pay it away in disbursing another ship chartered by David Ogden for me; in fact I never received any portion of the passenger money. It was received by Messrs. Pilkington & Wilson, and by them paid, as I understood, to Captain Whittlesey; but they may have paid some small sums towards disbursing another ship chartered for me by David Ogden; whether they did so or not I cannot tell.

Third. To the third cross-interrogatory he saith: I do not know precisely when the ship Hemisphere commenced discharging her inward cargo, but I believe that she commenced on the 16th day of June, 1851; nor do I know from personal recollection when she finished discharging it; but I have no doubt whatever she finished discharging on the 30th day of June, as she obtained her jerk note on that day, and a jerk note is always obtained as soon as the cargo is discharged. I cannot remember whether I was on board the ship on those days or either of them.

Fourth. To the fourth cross-interrogatory he saith: It is customary for vessels to receive cargo in Liverpool after the stiffening note is obtained, and receipt for it as fast as it comes along; but between the date of the stiffening note and jerk note the ship can only take iron or other heavy goods to stiffen her while she is discharging her inward cargo. The ship Hemisphere was not ready and willing to take and receipt for all cargo that might be offered

after the stiffening note obtained; she could not then do so; it was contrary to the customs laws. I was notified by the document marked A, annexed hereto, and referred to in my examination in chief, with regard to the ship being ready to take cargo on June 24, one thousand eight hundred and fifty-one.

Fifth. To the fifth cross-interrogatory he saith: I was frequently on board of the ship "Hemisphere" while loading, and on several occasions in the between-decks; to the best of my recollection I was only twice in her hold. I was not on good terms with Captain Whittlesey; from the treatment I received from him I could not be on worse terms. Nothing was sent to be shipped until her jerk note was received, except iron sent for her accommodation, and she did receive and receipt for it; demurrage was demanded of me on the part of the captain for detention of the ship to the amount and as set forth in the documents marked F, G, H and I, hereto annexed.

Sixth. To the sixth cross-interrogatory he saith: There was not any arrangement made between me and Captain Whittlesey that only 350 passengers should be taken, and the cargo should be put between decks in the place of more passengers; there were no calculations and figures made by me and Mr. Wilson, and Captain Whittlesey, or by any of the parties, to my knowledge, as *as* to what was best for the charterers; and it was not decided by me, or by any one else to my knowledge, that it was best to take only three hundred and fifty passengers, and more cargo in the place of more passengers; I did not order Captain Whittlesey to put up berths for only that number. He made his own arrangements without consulting me, stating that his charter-party was not signed by me, and that the name on the other side was quite good enough for him. I did not go down into the between-decks with the captain to measure off the space that would be available for cargo after taking that number of passengers. I did go down into the between-decks with Captain Whittlesey a short time before the ship sailed, to see what was doing; and then, to my astonishment, I found that he had stowed cargo in the between-decks, and had provided berths for only three hundred and fifty passengers. I never heard Captain Whittlesey say that he would do everything that lay in his power to help Mr. Ogden out with his charter, nor anything like it. Captain Whittlesey never expressed, nor showed, so far as I observed, any willingness or readiness so to do. More than 350 passengers were offered to the ship by me; I cannot say positively how many more, as they were collected by the passenger brokers.

Seventh. To the seventh cross-interrogatory he saith: As near as I can tell, the captain refused about seventy-five tons of railroad iron, and a quantity of bars, but how many I cannot tell. The captain said the rails could not be got down the hatchway, and

added that the ship was loaded as deep as she would go, and he would take no more. When the iron was offered and refused, it could have been put into the lower hold, had the ship been properly stowed. I have already stated that the iron in the lower hold was so placed by the direction of Captain Whittlesey as to be raised to an improper height, and when he had put measurement goods also into the lower hold. I do not think that iron offered and refused could have been put into the lower hold. Captain Whittlesey loaded the ship, as I have already stated, just as he thought proper; and when he had loaded her as he pleased, he told me he would take no more. The space unfilled with iron he did fill up with crates and such like; but if he had not raised the iron so high, and taken the iron engaged for him which was near the registered tonnage, as per charter-party, there would have been room for a quantity of dry-goods, such as crates, &c., which had been engaged for with the several shippers. When the iron was offered and refused, the captain did say that more iron would make the ship too deep; that she was as deep as he would go to sea in her, and that he would put only crates and such like goods in to fill up the lower hold; but from the manner in which he had stowed the iron, he was not even able to take the quantity of these goods that I had engaged.

Ninth. To the ninth cross-interrogatory he saith: Passengers were scarce at the time of the loading of the "Hemisphere" in Liverpool on the voyage in question; they were taken at low prices, comparatively speaking; and I believe that some (I cannot say how many) ships sailed about that time without their full complement of passengers, but whether this arose from the scarcity or the refusal to take passengers at the rate offered I cannot tell.

H. TAYLOR.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this twentieth day of August, one thousand eight hundred and fifty-three, before—

JOHN YATES, Jun'r,
Commissioner.

Alexander Taylor, of Liverpool, in the county of Lancaster, in England, aged 36 years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the respondent, doth depose and say as follows:

First. To the first interrogatory he saith: I am thirty-six years of age; I reside at Liverpool, and am a merchant of the firm of Alexander Taylor & Company; I know the respondent, David Ogden, but not any of the other parties; I have no interest whatever in the event of this action.

Second. To the second interrogatory he saith: I was not consignee of the ship "Hemisphere" on the voyage in question.

Third. To the third interrogatory he saith: He knoweth not, except in this, that no vessel has any right to take in cargo for an outward voyage before obtaining a jerk note; but under a stiffening note she may take in cargo for the purpose of stiffening her, and keeping her in a state of safety.

Fourth. To the fourth interrogatory he saith: I did not attend to the loading of the "Hemisphere" on the voyage upon which she arrived at Liverpool in or about June, one thousand eight hundred and fifty-one; I had loaded her once before this time in May or June, one thousand eight hundred and fifty; I think the "Hemisphere" could not safely discharge her inward cargo without taking in other cargo to stiffen her, unless she had ballast on board her; I believe she could not stand alone without such stiffening; I have no personal knowledge of the loading of the "Hemisphere" in June, one thousand eight hundred and fifty-one, and cannot speak to the other facts inquired after in this interrogatory.

Fifth. To the fifth interrogatory he saith: The "lay" days commence, by the usage and custom of Liverpool, as soon as a ship receives her jerk note and gets a loading berth; I have never heard of any usage or custom to give notice that a ship was ready to receive cargo, or that her lay-days had commenced whilst there was inward cargo on board, and before a jerk note was obtained.

Sixth. To the sixth interrogatory he saith: Assuming this interrogatory to apply to the voyage when the "Hemisphere" arrived in Liverpool, in or about June, one thousand eight hundred and fifty-one, I had nothing to do with her on the occasion in question, and have no personal knowledge of the facts here inquired about.

Seventh. To the seventh interrogatory he saith: I believe I read the charter-party of the "Hemisphere" on the voyage inquired of, and which was shown to me by Captain Whittlesey, and I had conversations with him on the subject, but I had nothing to do with the terms and conditions of the charter-party, and had no authority to vary them or intermeddle in the matter; and having no interest in the subject, I am now unable to state the nature of such conversations, or to give further information in answer to this interrogatory.

Eighth. To the eighth interrogatory he saith: The only information I possess, inquired after by this interrogatory, is, that on the voyage in which I loaded her, in May or June, one thousand eight hundred and fifty, her cargo consisted of twenty-seven tons weight of soda ash, one hundred and fifty tons weight of coal, five hundred and fifty-six tons weight of lead, iron, steel, tin, &c., and six hundred and eighteen tons measurement dry goods, crates of earthenware, &c., all of which were stowed in her hold; and she had a full complement of passengers, and drew, as appears from my books, eighteen feet of water. She subsequently put back to Liverpool dismasted, and her passengers had to be shipped by other vessels,

and when she sailed again she could not get her full complement of passengers, and she took in more cargo in her between-decks.

Ninth. To the ninth interrogatory he saith, he knoweth not.

Tenth. To the tenth interrogatory he saith, he knoweth not.

Twelfth. To the twelfth interrogatory he saith: I was not engaged in the business of procuring and shipping passengers for America in June, one thousand eight hundred and fifty-one. The rate for second cabin and steerage passengers on the ninth June, one thousand eight hundred and fifty-one, was about two pounds five shillings for steerage passengers, and three pounds for second cabin, less commissions; and I know this from my general connection with shipping. I do not know if I could have filled the "Hemisphere" with passengers at those rates, not being myself engaged in the passenger trade; but, as a matter of opinion, I think I could. I did not engage any of the passengers by the Hemisphere on this voyage, and am unable further to answer this interrogatory.

Lastly. To the last interrogatory he saith: I know that some of the passengers engaged to go by the "Hemisphere" to New York on the voyage inquired after were afterwards shipped by the "Andrew Foster," a vessel consigned to my house.

Second. To the second cross-interrogatory he saith: I have heard from John Cragg Taylor, and also from the respondent, David Ogden, that the ship "Hemisphere" was chartered for and on account of the firm of Taylor & James, which consisted of John Cragg Taylor and James Taylor James, and that they had the whole interest in the charter at the time it was made. I do not know that the said John Cragg Taylor has any interest in the charter now.

Third. To the third cross-interrogatory he saith he knoweth not.

Fourth. To the fourth cross-interrogatory he saith: It is customary for vessels to receive cargo in Liverpool after the stiffening note has been obtained, and receipt for it on the quay as fast as it comes along; but all cargo taken on board under a stiffening note is a special privilege for the convenience and safety of the ship, and to enable her to discharge her inward cargo, and this is granted before the ship has got a loading berth. I have no knowledge enabling me to answer the remainder of this cross-interrogatory.

Fifth. To the fifth cross-interrogatory he saith: I do not remember having been on board "the Hemisphere" whilst she was loading, but I may have been. I never went into her hold to look after the loading. I was on good terms with Captain Whittlesey. I have no knowledge to enable me to answer the remaining part of this cross-interrogatory.

Sixth. To the sixth cross-interrogatory he saith: I had nothing to do with the voyage in question, and made no arrangement with Captain Whittlesey, nor did any of the acts, and know nothing more of the facts here inquired after.

Seventh. To the seventh cross-interrogatory he saith, he knoweth not.

Ninth. To the ninth cross-interrogatory he saith: Passengers were scarce during the time of loading the "Hemisphere" in Liverpool, on the voyage inquired after. They were taken, as appears by my books, at from two pounds five shillings to two pounds ten shillings for steerage passengers. I cannot quote the rate for second cabin passengers with accuracy.

A. TAYLOR.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twentieth day of August, one thousand eight hundred and fifty-three, before—

JOHN YATES, JUN'R,
Commissioner.

Deposition of Henry Threlfall Wilson, taken at the office of the said John Yates the younger, No. 20 Fenwick street, in Liverpool aforesaid, in the said suit, by virtue of the said commission, on the twenty-fifth day of August, one thousand eight hundred and fifty-three.

Henry Threlfall Wilson, of Liverpool, in the county of Lancaster, aged twenty-eight years and upwards, of the firm of Pilkington & Wilson, of Liverpool aforesaid, merchants and ship brokers, (in the commission for examination of witnesses issued in this cause, and hereto annexed, inaccurately called James Wilson,) being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the respondent, doth depose and say as follows:

First. To the first interrogatory he saith: I am twenty-eight years of age. I reside at Liverpool, and am a merchant carrying on business in co-partnership with John Pilkington, under the firm of Pilkington & Wilson. I know the libellant, Jotham Parsons, slightly, but have no personal knowledge of any of the other parties to this action. I have no interest in the event of the action.

Twelfth. To the twelfth interrogatory he saith: I was engaged in the business of procuring and shipping passengers for America in June, 1851. The rate of fare on the 9th of that month for second cabin and steerage passengers was from three pounds ten shillings to four pounds each, and from three pounds to three pounds ten shillings for steerage passengers, as near as I can tell. I could have filled the "Hemisphere" at those rates at that time. My firm engaged a portion of the passengers by the "Hemisphere" during the month of June, one thousand eight hundred and fifty-one. All the passengers engaged by us for that vessel were not received on board. I do not now remember why they were not so received. There were five persons engaged who were not received. They were sent to New York by another ship, the "Mortimer Livingston." No arrangement was made in my office or elsewhere, in my

presence, between the master of the vessel and J. C. Taylor, as to the number of passengers to be taken in the "Hemisphere," or that she should only take three hundred and fifty. I was present at a conversation between Captain Whittlesey and J. C. Taylor, in the street, on the subject of loading the ship, in which the captain recommended J. C. Taylor to put more cargo on board and fewer passengers, and he, the captain, appealed to me whether that would not be the most remunerative, and I said that that would depend upon the draught of water; that if the captain would give an additional draught of water to compensate Mr. Taylor for the loss of passengers, it would probably be better for the ship and no loss to Mr. Taylor, or something to that effect. Mr. Taylor was agreeable to this if he got a sufficient draught of water to compensate him for loss of passengers, but they had not agreed upon this when I left them, and they were then discussing the subject. I heard the master say on another occasion that he would load his ship as he pleased, and to such a draught of water as he thought best, or words to that effect; and I have heard the captain say that it was a matter of no moment whether he was paid his charter-money by Mr. Taylor or not; that Mr. Ogden was responsible to him, and he would make him pay.

Lastly. To the last interrogatory he saith, he knoweth not.

Eighth. To the eighth cross-interrogatory he saith: I did not make figures and calculations with John C. Taylor as to whether it was not best to take three hundred and fifty passengers only, and more cargo in place of more passengers, except as I have stated in my examination in chief; but to enable me to express the opinion which I then gave, I did make a calculation in my own mind. I was of opinion that it would be as well to take more cargo and fewer passengers, with the additional draught of water to compensate for the loss of passengers, but no decision whatever was come to in my presence. It was not my conclusion that cargo would pay better than passengers, but I considered that it would pay as well with the increased draught of water. J. C. Taylor agreed with my conclusion, but when I left them they had not agreed upon the draught of water to compensate for the loss of passengers.

Passengers were not very plentiful in Liverpool during the loading of the "Hemisphere," but they were not so scarce as to prevent us filling her. They were not so scarce as to prevent us filling her. They were taken at the usual price for the season. I do not know that any ships were compelled to sail without their full complement of passengers.

I had no knowledge of the circumstances of John C. Taylor at that time, other than that he had paid his debts up to that period; he was in fair credit. I would have advanced him one hundred or two hundred pounds if he had asked me. I have never heard him say any thing of the ship having provisions for three hundred and fifty passengers on board. I never took into account that the ship

had provisions for three hundred and fifty passengers on board; I did not know that was a fact, and never heard it urged as a reason for taking that number only. John C. Taylor did not speak of it, to my knowledge, as a reason for not taking more passengers. I never advised Mr. Taylor to take only that number. I have already stated that it would have been as well (I do not know whether better) for him to take less than the full number of passengers, and take more cargo in place of more passengers if an increased draught of water were given to compensate for the passengers.

Ninth. To the ninth cross-interrogatory he saith, I have answered this cross-interrogatory in my answer to the preceding one.

HENRY J. WILSON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twenty-fifth day of August, one thousand eight hundred and fifty-three.

JOHN YATES, JR.,
Commissioner.

Deposition of John William Shaw, taken at the office of the said John Yates the younger, number 20 Fenwick street, in Liverpool aforesaid, in the said suit, by virtue of the commission, on the twenty-sixth day of August, one thousand eight hundred and fifty-three.

John William Shaw, of Liverpool, in the county of Lancaster, aged fifty-three years and upwards, of the firm of J. W. Shaw & Company, of Liverpool aforesaid, passenger brokers, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the respondent, doth depose and say as follows:

First. To the first interrogatory he saith: I am fifty-three years of age, and am a passenger broker, carrying on business in Liverpool under the firm of J. W. Shaw & Company. I do not know the parties to this action, or either of them. I have no interest in the event of this action.

Twelfth. To the twelfth interrogatory he saith: I was engaged in the business of procuring and shipping passengers for America in June, one thousand eight hundred and fifty-one. The rate of fare on the ninth of that month for second cabin and steerage passengers was, for second cabin from three pounds ten shillings to three pounds fifteen shillings, and for steerage from three pounds to three pounds three shillings. I could have filled the "Hemisphere" with passengers at that time at those rates. During the months of June and July, one thousand eight hundred and fifty-one, I engaged passengers for the Hemisphere. I engaged part, and Pilkington & Wilson part. All the passengers engaged by me for that vessel were not received on board. The reason assigned to me was, that they could not all be taken, the vessel having

cargo in the between-decks. Sixty-six of the passengers engaged by me were not received on board, and I shipped them by other vessels—the "Kalamazoo," the "Andrew Foster," and other vessels. No arrangement was made in my office, or elsewhere in my presence, between the master of the vessel and J. C. Taylor, as to the number of passengers to be taken in the "Hemisphere," or that she should only take three hundred and fifty. I never heard the master say anything about loading his vessel as he pleased, or anything to that effect.

Lastly. To the last interrogatory he saith: The only matter I can remember tending to the benefit of the respondent is, that the rate of fare at the time the "Hemisphere" sailed in July, one thousand eight hundred and fifty-one, was for steerage passengers, from two pounds five shillings to two pounds ten shillings; and for second cabin passengers, from three pounds to three pounds ten shillings each, and I could have filled the "Hemisphere" at those rates.

Ninth. To the ninth cross-interrogatory he saith: I think passengers were plentiful for the season of the year, during the time of the loading of the "Hemisphere," in Liverpool; the prices, so far as I know, were the usual prices at that season of the year. As far as I can remember, many ships were not compelled about that time to sail without their full complement of passengers.

JOHN W. SHAW.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this twenty-sixth day of August, one thousand eight hundred and fifty-three, before—

JOHN YATES, Jun'r,
Commissioner.

I certify the foregoing to be a true copy of the original, now remaining on file in my office, Sept. 19th, 1853.

GEO. W. MORTON, *Cl'k.*

Endorsed: 9; 400. U. S. district court. Jotham Parsons et al. vs. David Ogden. Copy respondent's testimony, taken under commission to Liverpool.

Filed Sept. 9, 1853.

U. S. Dist. Court.

DAVID OGDEN
ads.
JOTHAM PARSONS and others.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Nicholas Holberton, a witness produced and examined de bene esse, on the part of the respondent in this action, being duly sworn, deposes and says: I am master of the ship "Andrew Foster," and expect to sail within this week on a voyage to Liverpool.

I know the ship "Hemisphere," and also Captain Whittlesey, who formerly commanded her. I know that the "Hemisphere" was in Liverpool in June and July, 1851; Captain Whittlesey commanded her at that time. I was there at the same time, with the "Andrew Foster." I had several interviews with Captain Whittlesey while there. I arrived at Liverpool about the middle or 20 June, 1851; I went there to take command of the "Andrew Foster." The Andrew Foster and the Hemisphere were both in the same dock when I arrived, not more than two or three ships' length apart. The Hemisphere had not then discharged her inward cargo; or at least, Captain Whittlesey said she had not. I was not on board his ship at all; I only know what cargo he took in then from what he said; he said he had a general Liverpool cargo—iron, crates, dry goods. I had conversation with him about the stowage of his iron. We frequently met at the table; we boarded at the same hotel. As he knew I commanded a ship belonging to Mr. Ogden, or of which he was agent, he frequently addressed his conversation particularly to me, saying that I might take note of it or inform Mr. Ogden. Frequently in the conversation he spoke about stowing his ship, and of his charterers. He more than once said he should stow the ship to suit himself, without regard to what she would carry, or anything else. He once showed me a clause in his charter in regard to lay-days. I told him I thought it was a very blind charter. He said it might be blind on the part of the charterer, but it was "wide awake" on his part. I told him that a wide-awake charter was one that would make a lawsuit. He said the charterers were welcome to all the advantage it gave them, and he would take all it gave him. He said he should not put his ship down deep, as it was no advantage to him; that he should only take so much as he thought proper. He said he did not care about the parties in Liverpool; all he should look to was the charterer in New York. I don't know when he notified that he was ready to receive cargo. We frequently ask for a "stiffening note," in order to book our ship for a loading berth; by so doing we don't lose any time, or have any trouble in moving.

When a vessel will not stand without ballast, I consider it an accommodation to be permitted to take in cargo, so as to enable me to discharge the remainder of my cargo. When a vessel takes in cargo as stiffening before all her inward cargo or ballast is discharged, the time required to discharge her remaining cargo or ballast is deducted from the lay-days; this is a common custom in Liverpool. I mean by deducting, that the lay-days do not commence in such case until all the cargo is discharged. If the vessel has ballast and no cargo, then her lay-days commence as soon as she is alongside of the dock in a loading berth.

I had a conversation with Captain Whittlesey upon the subject of

the lay-days. I don't remember the date; but he said he had notified his assignee that he was ready to receive cargo. I asked him if his cargo was all discharged. He told me it was not; that he could see the sheer of his ship, and had got a stiffening note. I told him it was customary in the port of Liverpool for the lay-days not to commence until the inward cargo was discharged, the ship "jerked" and in a loading berth. He said his charter-party did away with the customs of the port. I asked him if he was ready to take on board all kinds of cargo. He said that was nothing to the purpose, he could receive it. I asked him if he could take *if he could take* on board long bars of railroad iron. He said no, but he could receive it. I think this was about all.

I brought out in the "Andrew Foster" from 400 to 500 passengers. I sailed after the Hemisphere, some few days after—within a week. From 30 to 50 of these passengers had passage tickets made out for a passage in the Hemisphere. Captain Whittlesey told me he would not bring his complement of iron unless he took less number of passengers. I don't know in any other way, except by the tickets, that Capt. Whittlesey left any passengers behind, which were engaged for him. In all cases where passengers are engaged for a particular vessel, and they are transferred to another; the tickets are taken by the vessel to which they are transferred, and show the name of the vessel in which they were to have been carried, or from which they were transferred; and there were from 30 to 50 of my passengers that had such transferred tickets; there were more than 30, and perhaps more than fifty of them.

I measured the Hemisphere in Liverpool in February or March last; I could not get her exact depth, as she had some ballast, but it was from 22 feet 6 inches to 22 feet 9 inches. I don't know much about the build of the vessel; my ship is about the same depth, and I load her from 20 to 21 feet.

Ques. Look at the charter-party now shown to you, and say where the master was, by usage and custom, required to carry the iron.

I think he should carry it in his lower hold, or on his main deck, and to keep his between-decks open for his passengers.

Cross-examination. I command a ship of which the defendant is agent. I was in the same employ at that time, and have been since that time. As far as possible I have given Capt. Whittlesey's precise words. I don't remember the day of the month I arrived in Liverpool; I think I sailed from Liverpool the 17th of July. In my testimony, wherein I say that Mr. Whittlesey remarked that "he should stow the ship to suit himself, without regard to what she would carry or anything else," I merely mean to say, that Capt. Whittlesey said he would stow the ship to suit himself, without regard to observations of the charterers. I presume that Capt. Whittlesey meant, when he said "he should not

load down deep, as it was no advantage to him, and should only take what was proper," that he meant he should only load the ship so deep as he thought it was proper for the ship to be loaded, and should not take an excessive cargo, as it was of no advantage to him. He said he should conform to his charter-party; the charter-party didn't bind him to anything; he said so more than once. His language respecting Mr. Taylor was always abusive. I heard him express regret for Mr. Ogden, and say he should conform to his charter-party, and was sorry Mr. Ogden would lose by the voyage. He did not say to me he would do all he could for the benefit of his charter-party.

When the stiffening note is got, ship booked for her outward cargo, and in her loading berth, and charterers notified that the ship is ready to receive her cargo, do not the lay-days commence from that time?

We cannot be in a loading berth until all of the inward cargo is discharged, and I answer no; I mean that a certain ship is ready to receive cargo when she is ready to take cargo on board.

Q. If the consignees should receive to give you cargo for 3 or 4 weeks after you get your stiffening note, would you think, in that case, that your lay-days did not commence until the expiration of that time?

I presume the consignee is not bound to give any cargo until all the inward cargo is discharged. I consider it a matter of accommodation for the consignee to give cargo for stiffening. It is a general custom in Liverpool to give cargo for stiffening, but in such case it is custom for the lay-days to commence when the ship is jerked and in a loading berth.

I don't know the source of the tickets, and by whose direction they were directed to the Hemisphere; I took them from the passengers when they came on board; there were 39 passengers that were offered him.

I don't mean to say that when a ship is 22 feet 6 inches deep, that I should always load her 20 to 21 feet deep.

Is it usual to carry iron on the main deck of a ship from Liverpool to New York?

I have done it, and frequently do so.

Is it generally customary to do so?

It is frequently done.

Do you think that Capt. Whittlesey, by his charter-party, was bound to carry iron on deck, the main deck?

No, I do not; but I think he was obliged to carry it clear of the passenger deck.

(Last part objected to.)

Re-ex'd. Question. If Captain Whittlesey had agreed to bring all the passengers he could by law, giving them 14 feet each, had he any right to put cargo between decks?

Ansr. I should think not. N. HOLBERTON.

Sworn before me this 24 May, 1853.
By consent. GEO. HARGAN, *Com'r of Deeds.*

It is agreed that the foregoing deposition be read upon the trial of this cause.

C. DONOHUE.

Endorsed: 9; 400. U. S. district court. David Ogden ads. Jotham Parsons and others. Dep'n of Nicholas Holberton, on part of respondent. E. H. Owen, att'y.

United States District.

DAVID OGDEN
ads.
JOTHAM PARSONS and others.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Edwards, a witness produced and examined de bene esse on the part of the defendant in this action, being duly sworn, deposes and says: I am master of the ship Catharine, now in this port, and expect to go to sea in her in the course of next week. I have commanded her for over three years past. I was in Liverpool, England, in June, 1851. It was at the time the ship Hemisphere lay there. The Hemisphere was then commanded by Captain Whittlesey. His vessel was chartered by the respondent, and mine was also. I arrived in Liverpool before the Hemisphere. When the Hemisphere arrived she took her place near my vessel, there being two vessels between us. I don't know what cargo the Hemisphere had. After she had been there a few days, Captain Whittlesey came on board of my vessel and said he had fallen out with his consignee, and that he had sent the consignee notice, through a lawyer, that he was ready to take in cargo. John C. Taylor was the consignee referred to. I was taking in cargo in my vessel at the time. He said he would not go and see the consignee any more, and that he should come to him. He said he did not care a damn for Taylor. David Ogden was his charterer, and he was good enough. The same day he looked down into the hold of my vessel and saw how I was stowing my iron. He said I was a fool for so doing, and if I was not very careful I would lose my masts by it. I asked him why. Then he replied that we were chartered ships, and that he would be damned if he would load his ship over eighteen feet. Neither would he take over eight hundred tons of iron, unless the consignee would allow him to take it in his between-decks. I replied, saying that I should load my ship as if I was loading her for my owners, and that I felt bound to do so. My vessel is 610 tons register. I afterwards went, at the request of Mr. Taylor, to see if the Hemisphere was ready to receive cargo. I went aboard of her, and went in her between-

decks. I saw great quantities of provisions there, and a great many passengers' berths up. I saw some logwood there. The berths and provisions were aft between decks, and the logwood forward between decks, *and the logwood forward between decks.* The captain told me that the berths and provisions were the remains of the inward voyage. I looked into the lower hold.

Question. Was she ready for cargo?

No, she was not one third empty; neither end was ready to receive iron. There was iron alongside of her at that time. There were two lighters with iron lying alongside—one next the ship, and the other next to the lighter. I don't know when he took in this iron, but I know it was alongside three days before he took it in, so as to discharge the lighters. The captain came aboard of my vessel, and asked if I should introduce him to Mr. Taylor, who was then upon the pier. He said he didn't care if I did. Taylor came aboard, and I did introduce them. Mr. Taylor asked him the reason why he did not discharge the iron which was in the lighters. He asked Mr. Taylor if he had received a letter from a lawyer that day; and Mr. Taylor asked him why he would have those letters sent to him before his vessel was "jerked." Captain then told him to go to hell; he would load his ship as soon as he pleased, and when he pleased, and he threatened to kick Taylor. He told him he was a State prison bird, and not worth his notice; that David Ogden, of New York, was the man he should look to. We then parted, and I did not see him again on the subject of the vessel.

Ques. Suppose a vessel to be 24 feet deep from the underside of the deck to the skin; how deep would you load her?

Ans. I would load her twenty-one feet.

Ques. Suppose a vessel will not stand without ballast; when would you notify that your lay-days commenced? (Objected to.)

Ans. After the last of my cargo was out, the vessel "jerked," and cleared from the custom-house.

Ques. Suppose you wanted cargo for stiffening; would you notify for lay-days then? (Objected to.)

Ans. No; neither did I do so, with my ship, although I took in stiffening cargo. I brought iron in my vessel; I brought it all in the lower hold, and stowed crates and dry goods there also. I had a full cargo; I had a few crates between decks. (Obj. to.)

Ques. If a vessel had carried 1,435 tons of weight and measure in the lower hold on one voyage from Liverpool to New York, could she not have carried the same weight and measure in her lower hold on another voyage between the same places? (Objected to.)

Ans. Yes.

Being cross-examined. The log-book of the Catharine is I don't know where; I think likely aboard the vessel, not in use; the date of my arrival in Liverpool is entered in that. I have no recollec-

tion of the day I arrived in Liverpool; it was some time somewhere between the 8th and 20th of June. I can only come so near as to say it was in June—nothing more. Have not looked at any papers to refresh my memory on the subject; the first that called my attention to the Hemisphere was when the Capt. came to me, as I have stated in my direct examination. I have no recollection of how long I had been in there. I have no idea how long it took me to load there, nor how long I was in Liverpool without looking at log-book. I do not recollect how many days after I saw Capt. Whittlesey I remained in Liverpool. I was up at the head of the dock, and *he*, the Hemisphere, was not right up at the other end; there was ship between him and the end; they lay in tiers—one row alongside, some outside. There was one outside of my vessel and between my stern and the ship next to me; she was discharging. I don't know whether there was any more outside of that tier but that one vessel. The consignees I came to had no other vessels but our two. I did not bring home a full complement of passengers, because I put cargo betwixt decks. I don't know whether I could have got them or not. I put cargo in the between-decks because there was no room in the hold. I cannot give any idea between decks without looking at my books. I had no between. I had 595 tons of iron.

Q. Suppose you vary the question put to on the direct as to the amount carried, and make it, if a vessel carries a certain amount of weight and measure and gets dismasted in consequence, would it be safe to take the same cargo on the same voyage?

A. No, sir.

Q. Do you know ?

I don't know the date we left Liverpool. I do not recollect any of the dates on which either of the conversations took place which I detailed in my direct. I made no memorandum of either of the conversations. I can't recollect which vessel arrived here first. I have no idea what cargo the Hemisphere had in. When I left she was taking in. I can't say how long before I left that she had been taking in. I have been in Amsterdam trade for 29 years. I made but that one voyage to Liverpool during that time. I have been only in the Amsterdam trade as Capt.; had been before that mate in the London line 2 or 3 years. I am now bound to Antwerp.

Direct resumed. Ques. Suppose a vessel of 1,020 tons register, with 600 tons of iron on board, was dismasted; might it not have been from some other cause than the weight of iron she had on board; and if so, what other cause? (Objected to.)

Ans. I should only consider such a ship in ballast; I should not think the iron caused her to lose her masts; she might have lost her masts by extraordinary storm; her back stays might have broke; many circumstances might have occurred to occasion her to lose her masts.

JOHN EDWARD.

Sworn before me, this 20th March, 1853.

KENNETH G. WHITE,
U. S. Com'r.

Endorsed: U. S. district court. David Ogden ads. Jotham Parsons and others. Deposition of John Edwards, on part of respondent. E. H. Owen, proctor.

Deposition of witnesses produced, sworn and examined, the twenty-ninth day of September, in the year one thousand eight hundred and fifty-three, at Medford, in the county of Middlesex, and Commonwealth of Massachusetts, under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, second circuit, in a certain cause therein depending and at issue between Jotham Parsons and oth., libellants, and David Ogden, respondent, as follows:

Elisha Hayden and William M. Cudworth, both of said Medford, shipwrights, and partners in business under the name of Hayden & Cudworth, aged twenty-one years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the respondent, do depose and say as follows:

First. To the first interrogatory they say: That their names are Elisha Hayden and William M. Cudworth; that they live in Medford, in the county of Middlesex, and Commonwealth of Massachusetts, and that they are shipwrights by trade and occupation; that they know Jotham Parsons, the libellant, but do not know David Ogden, the respondent.

Second. To the second interrogatory they say: That they do know the ship Hemisphere, which was built in Medford, Massachusetts, in or about the year 1849 or 1850; that they did build the said vessel; that she was launched the 23d day of April, 1850; that her length on deck was one hundred and seventy-three feet, her breadth in the extreme was thirty-six and one-half feet, and that her actual depth, as distinct from her depth by register, was twenty-three feet.

Third. To the third interrogatory they say: That said ship was not launched with her spars all "ataunto;" that her yards were not crossed, as she had no spars in her at all, except the bowsprit, and that she had no boats on her deck; and that as said ship had no spars in her except as aforesaid, they cannot state more fully or particularly how, in that respect, she was launched.

Lastly. To the last interrogatory they say: That they do not know, and therefore cannot state any other matter relating to the said vessel, and the launching thereof, than what they have already stated, except that she was launched stern foremost, and in the usual manner of launching vessels here, and that nothing occurred

in the launching of said vessel, which they can remember, different from the launching of any vessel.

ELISHA HAYDEN,
WILLIAM M. CUDWORTH.

Examination taken separately, reduced to writing, and by the witnesses subscribed and sworn to, this twenty-ninth day of September, in the year 1853, before—

SANFORD B. PERRY,
Commissioner.

Commissioner's Fees.

Subpœna	10
Service of same	50
Two witnesses, 1 day each, and travel	2 16
Services in taking and certifying	6 00
	$8 76

9; 400. U. S. district court. David Ogden ag'st Jotham Parsons. E. H. Owen, proc. for respo't. Copy testimony on part of respondent taken under commission to Medford, Mass.

Filed Oct. 3d, 1853. Rec'd Oct. 5th, 1853.

Fees 70 cts.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Monday, the third day of July, in the year of our Lord one thousand eight hundred and fifty-four. Present, the Honorable Charles A. Ingersoll, district judge.

JOTHAM PARSONS and others
vs.
DAVID OGDEN.
} 9; 400.

The case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed, by the court, that the libellants recover nothing for demurrage, but that they recover in this action against the respondent the fifteen hundred pounds sterling, the price agreed to be paid by the charterer for the use of the ship, deducting therefrom the money which they have received to apply in part payment; and also, that they recover for the price of the stores furnished the passengers, and the money paid for hospital and commutation fees and quarantine expenses; and that it be referred to a commissioner to ascertain what is due to the libellants in those respects, and to report thereon to this court with all convenient speed.

Vol. 9, No. 400. United States district court for the southern district of New York. Jotham Parsons et al. vs. *Daniel* Ogden.

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Betts & Donohue, proctors for lib'lts. Decree and order ref'ce. Filed the third day of July, 1855.

U. S. District Court.

JOTHAM PARSONS and others
vs.
DAVID OGDEN.
} Testimony on reference. 9; 400.

1854, Nov. 26. The proctor for the libellant being present, proceeds with the reference, and calls William Whittlesey, who being sworn, says: That he is a shipmaster. On being shown a paper marked Exhibit No. 1, G. W. M., he says it is a copy of the charter-party. The amount of the charter was fifteen hundred pounds sterling, free of commissions. We left the dock in Liverpool about the 17 of July, 1851. Exhibit No. 2, G. W. M., is the bill of provisions, &c., furnished to the vessel, amounting to £280 12 7; is all correct. It was furnished about the middle of June, 1851.

WM. WHITTLESEY.

Direct resumed. On the arrival of the ship, the ship paid the commutation money, $1 50 per head, making $529 50 in gross. The ship paid for the permits also, 20 cts. for every five passengers, $14 20 in all. About $20 was paid for landing sick passengers at quarantine by the ship. The commutation money and other items last named were paid on or about the 1st of September, 1851.

On his cross-examination, he says: The stores charged were purchased in Liverpool, in the year 1851, in the voyage previous to the one in question. I think they were purchased from a man by the name of Gardner; I don't know the first name, or the name of the firm at Liverpool; he was a dealer in passengers' provisions. I can't tell, but presume I got a bill of those goods. I presume I brought the bill home and delivered it to my owners; I have no doubt I got a bill of those goods. I presume the goods were purchased for cash. The stores were purchased for the passengers I was going to bring out on that voyage. I did not intentionally lay in a greater supply than I needed. I brought out between 5 and six hundred passengers on that voyage; I am not sure about it. We laid in a supply for a full complement of passengers; but if this is the voyage in which we were dismasted, we did not bring a full complement of passengers.

Q. What kind of stores are required for passengers?

A. Oatmeal, bread, rice, flour, sugar, molasses, tea, pork, and vinegar. (Witness produces a scale of provisions, marked Exhibit 3, G. W. M. Witness says Exhibit No. 2 is not his handwriting.) I made out a list in Liverpool of the passengers' stores at the time of entering upon this charter-party. I don't remember whether I delivered a copy of it to the agents of the charterers or not. I did not at the same time buy any other passengers' provisions in Liver-

pool. There was no agreement between me and the agent of the charterers as to the value of the stores. I know myself the value of the stores, and the prices named were about the value at that time. I don't know of any difference between the value of old and new stores if the same have been passed by the government inspectors. These were passed. The government inspector is authorized by law to substitute one kind of stores for another, provided they are of equal value. I don't recollect whether an account current was delivered to me by agent of the charterers in Liverpool, nor whether any money was paid to me or not. I rather think there was; my menory is bad. I don't recollect whether I received £240 or not; I received some money—I don't recollect how much my freight *lost* amounted to. I should think I brought 350 or 360 passengers, or between the two. I know nothing about the weight of the meal, except what the mate stated to me. I did not assist in weighing it. I don't recollect how many chests of tea Mr. Taylor furnished. Somebody put in some casks of water, not as many as the law required. I can't tell whether I paid the commutation money personally or not. Mr. McGaw paid some bills and I paid some. It does appear to me that I did pay the commutation money myself. I don't recollect whether it was paid in bills, gold, or by a check, or whether I tood a receipt for it. If I did I rendered it to either Mr. Parsons or John A. McGaw. When I returned here I gave my owners an account of my receipts and disbursements in Liverpool. I rather think I paid the money for the permits and at quarantine personally, but I do not recollect. I received a little money in Liverpool—don't know from whom. The customary price for putting up berths was 18 pence sterling each berth which we did. Counsel for the respondents produces a paper marked Exhibit 4, G. W. M.

On further direct he says: he was around when these stores were weighed by the mate, and is confident that the amounts specified were on board, because our ship could not be cleared without they were on board. (Ob. to.)

Are you satisfied that the prices named in Exhibit No. 2 are correct? (Ob. to.)

I think I have testified to that in my previous examination. I don't know that I have seen the mate for two years.

(The libellants now offer to read all the evidence produced before the court on the trial of this cause. Counsel for respondents objects to the reading of the deposition of the mate of the ship Hemisphere without proving his absence from this district.)

On further cross-examination he says: I can't tell what the ship paid for medicines in Liverpool, nor the amount paid for coal. I can't tell how much coal the passengers consumed, nor how much medicine they consumed, nor how much wood they consumed; it is impossible for me to tell those things. We bought wood in Liverpool, but I do not recollect how much. I don't know how much

we paid for water-casks; I don't know how many water-casks we used. I don't know how many barrels of oatmeal we turned over to the charterers. We turned over to the charterers from 20 to 30 barrels of rice, as many bags of bread as we had left—I don't remember how many there were—from one to five barrels of sugar, from one to twenty chests of tea, from one to ten—I cannot come any nearer. We had from 70 to 150 sacks of oatmeal—I can't come any nearer. There might have been 100, more or less, bread bags. The person whom I asked to value these provisions made a written statement of their value. Some things were higher and some lower than the market value; the meal I know was higher.

Direct resumed. Is the paper marked Exhibit 5, G. W. M., the estimate referred to in your cross-examination?

Yes.

Counsel for libellant offers the paper in evidence, and counsel for defendants objects to the same.

The S. Gardiner & Sons are the same firm from whom I purchased the stores. WM. WHITTLESEY.

Adjourned until Dec'r 6th, at 10 a. m.

1854, Dec'r 6. The proctors for the respective parties being present, Mr. Owen calls Samuel M. Parsons, who has conducted the testimony on the reference, and asks him to be sworn as a witness for the respondent; and the witness's fees being paid, he is duly sworn. He says he is the son of Jotham Parsons; that he had conversations in a professional capacity with the libellants. Look at the paper marked Exhibit 4. He says he has seen it several times.

Was the draught from which that was copied prepared by you? (Ob. to.)

Did you prepare a statement of the items of the claim in this cause under the direction of the libellants, or either of them?

I did.

Where is that statement?

I sent it to Mr. Donohue, the proctor for the libellants.

Is the paper marked Exhibit No. 4, G. W. M., a copy of that paper? (Objected to, on the ground, first, that they have not given any notice to produce the paper, and it is not competent for the witness to give his belief on the subject; and that it is calling from the witness testimony as to matters which he obtained from the libellants as attorney and counsel.)

(Exception allowed.)

Have the libellants ever informed you as to having received money for which the respondents in this cause are entitled to be credited?

The same objection as the last, and the same ruling.

Who composed the firm of McGaw, Foster & Co., in July, 1851?

I do not know, but have understood John A. McGaw, I think Thomas Foster, and the other I think was Stevenson. I was not acquainted with them at the time, and have no knowledge of their receiving the freights, but presume they received what were collected if any.

J. M. PARSONS.

Adjourned until Wednesday, the 13th inst., at 10 a. m.

The libellant requires the presence of Capt. Whittlesey for further cross-examination, and at the same time to produce the papers referred to in his previous examination.

Wednesday, Dec'r 13th. The proctors for the respective parties being present, J. M. Parsons being recalled, and shown a paper marked Exhibit No. 6, he says he does not think he ever saw it before, and does not know in whose handwriting it is.

J. M. PARSONS.

Adjourned until Saturday, the 16 instant, at 10 a. m.

Dec'r 16th. Proctors attended. Adjourned until Monday, 18th inst., at ½ past ten a. m.

Dec'r 18th. Adjourned to 21st instant at 10 a. m.

21. " 22 " " a. m.

Dec'r 22. The proctors for the respective parties being present, the libellants proceed with the reference. William Whittlesey is recalled direct. On being shown Exhibit 2, G. W. M., he says the ship provided the berths, 350, at 1s. 6d. sterling, which it was worth. The ship also put up bulkheads—three—at one pound sterling; they were well worth that amount.

The ship furnished water-casks and tanks for the use of the passengers. I estimated at $2 10, I presume when I came home, and that I think correct. I now think that was my estimate at the time. The ship furnished all the measures, all the scales, and all the pumps for the passengers; they were worth at least two pounds. The ship furnished part of the coal for the passengers, and it was worth £2 10. The ship furnished medicines for the passengers, and it was worth all that was charged, £4 0 2. The ship furnished a caboose; it is charged at £1, and is worth all of that. The ship furnished all the wood, and was worth all of £2. It would not be bought for anything like that. The oatmeal sacks and bread bags were fully worth all they are charged. I paid the government agent one guinea for passing the goods. Since my last examination I have looked over my original books, and have refreshed my memory as to the above items, and find them correct. I took measures personally, when in Liverpool, to ascertain what the provisions, &c., were worth, as specified in the exhibit, and they were fully worth the prices named in the exhibit. On further cross-examination, he says he does not find the entry of the medicine in his book, nor the coal. I think Mr. McGaw made the estimates.

WILLIAM WHITTLESEY.

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Samuel M. Parsons recalled. He says the draught of Exhibit 4 was prepared by witness. I prepared a statement of the items of the claim by directions of the libellant; I sent it to Mr. Donohue; and Exhibit No. 4, G. W. M., is a copy made up to August 1, 1854. I understood from the libellants that the several credits on Exhibit No. 4 were correct.

On further cross-examination, he says that the whole of Exhibit 4, G. W. M., was made out from the statements of the libellant when the credits were given to him by the libellants. The second charge is the sum total of Exhibit No. 2, in which, however, is not included the one guinea paid the inspector by the captain as just testified to, and which item is less by one pound 10 shillings and 2 pence *less* than it should have been, there being a mistake in the carrying out. I have calculated the interest to Dec'r 30th, 1854. The exchange was ten per cent.

In addition to the interest specified in Exhibit 4, which I cast up to August 1, 1854, I have calculated to Jan'y 1, 1855, and find the same to be $121 62, being on the principal sum of $4,170 20. The int. on the additional £2 10, or $12 21, is $2 97.

The whole amount (4,182 41)	$4,182 41
Int. on the whole amount to Jan'y 1	976 93
	$5,159 34

S. M. PARSONS.

Adjourned until Wednesday, 27th Dec'r, 1854, at 11 a. m.

Dec'r 27, 1854. The proctors for the respective parties being present, the testimony closed.

This charter party, made and concluded upon in the city of New York, the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-one, between McGaw, Foster & Co., agents of the ship Hemisphere, of the port of New York, of the burden of one thousand and twenty (1,020) tons, or thereabouts, register measurement, now lying in the harbor of New York, of the first part, and David Ogden, of the second part, witnesseth: That the said party of the first part agrees, on the freighting and chartering of the whole of the said vessel, with the exception of the deck cabin and necessary room for the crew and stowage of provisions, sails and cables, or sufficient room for the cargo hereinafter mentioned, unto said party of second part, for a voyage from Liverpool to New York, on the terms following: The said vessel shall be tight, staunch, strong, and every way fitted for such a voyage, and receiveon board during the aforesaid voyage the merchandise hereinafter mentioned, and no goods or merchandise shall be laden on board otherwise than from the said party of the second part or his agent. The said party of the second part doth engage to pro-

vide and furnish to the said vessel a full cargo of general merchandise, and not exceeding five hundred and thirteen (513) second cabin and steerage passengers; the ship not to take exceeding her registered tonnage of iron; and to pay to said party of first part, or agent, for the use of said vessel during the voyage aforesaid, fifteen hundred pounds sterling free of commissions; bills of lading to be taken in part payment; balance to be paid to the captain in Liverpool, in cash, before the sailing of the ship.

It is agreed that the lay-days for loading shall be as follows, commencing from the time the captain reports himself ready to receive cargo: fifteen running lay-days, and that for each and evey day's detention by default of said party of second part, or agent, one hundred silver dollars per day, day by day, shall be paid by said party of second part, or agent, to said party of first part, or agent. The cargo or cargoes to be received and delivered according to the custom and usages at the ports of loading and discharging.

The charterer to provide water, provisions, and berths, medicine, and all other expenses connected with passengers, and to pay hospital and commutation fees in New York, and quarantine if any. All surplus stores provided by the charterer remaining on arrival at New York to belong to charterer.

The ship to be allowed to furnish berths, and the charterer to pay the usual price per head to the ship. The passengers' stores now on board the charterers agree to buy at their value in Liverpool.

To the true and faithful performance of all and every the foregoing agreement we, the said parties, do hereby bind ourselves, our heirs, executors, administrators and assigns, each to the other, in the penal sum of ten thousand dollars.

In witness whereof, we hereunto set our hands the day and year first above written.

DAVID OGDEN.
McGAW, FOSTER & CO., *Agents.*

H. B. STEPHENSON,
Witness to the signature of D. Ogden.
D. J. HOLDROYD.
Exhibit No. 1., G. W. M.

Exh. 2, G. W. M.

74 loads oatmeal, (17,005 lbs.,) 27*s.* per load.....	£99	18	0
28 bags rice (6,531 lbs.) 58 1 7, 10*s.* 6*d*.....	30	12	4
86 bags bread, 87 2 0, 11*s.* 6*d*.....	50	6	3
2 barrels sugar, 4 2 6, 21*s*.....	4	15	8
38 galls. vinegar, 10*d*.....	1	11	8
10 bls. flour, 20*s*.....	16	0	0
4 casks molasses, 26 2 16, 10*s.* 6*d*.....	13	19	9
4 chests tea (328 lbs.) 1*s*.....	16	8	0

74 oatmeal sacks, 10*d*.				£3	1	8
28 bread bags, 6*d*.					14	0
				£237	7	4
350 berths, 1*s*. 6*d*.	£26	5	0			
Bulkheads	3	0	0			
Use and expenses of water-casks	2	10	0			
Weights and measures of different kinds for passengers' use	2	0	0			
Coal	2	10	0			
Medicine	4	0	2			
Caboose	1	0	0			
Wood	2	0	0			
	£43	5	2	43	5	2
				£280	12	7

Exhibit No. 2, G. W. M.

Scale of Provisions required by the last act of Parliament for emigrants to the United States, each adult—the voyage 70 days.

	Passengers	1	2	3	4	5	6	7	8	9	10	20	30	40	50	100	200	300	400	500	Weekly allowance for 1 passenger.
English Act.	Oatmeal	50	100	150	200	250	300	350	400	450	500	1,000	1,500	2,000	2,500	5,000	10,000	15,000	20,000	25,000	5 lbs.
	Bread	25	50	75	100	125	150	175	200	225	250	500	750	1,000	1,250	2,500	5,000	7,500	10,000	12,500	2½
	Rice	20	40	60	80	100	120	140	160	180	200	400	600	800	1,000	2,000	4,000	6,000	8,000	10,000	2
	Flour	10	20	30	40	50	60	70	80	90	100	200	300	400	500	1,000	2,000	3,000	4,000	5,000	1
	Sugar	5	10	15	20	25	30	35	40	45	50	100	150	200	250	500	1,000	1,500	2,000	2,500	½
	Molasses	5	10	15	20	25	30	35	40	45	50	100	150	200	250	500	1,000	1,500	2,000	2,500	½
	Tea	1¼	2½	3¾	5	6¼	7½	8¾	10	11¼	12½	25	37½	50	62½	125	250	375	500	625	23
Am'n Act.	Pork	10	20	30	40	50	60	70	80	90	100	200	300	400	500	1,000	2,000	3,000	4,000	5,000	1 lb.
	Vinegar	Pints 1	Pints 2	Pints 3	Pints 4	Pints 5	Pints 6	Pints 7	Pints 8	Pints 9	Pints 10	Pints 20	Pints 30	Pints 40	Pints 50	Pints 100	Pints 200	Pints 300	Pints 400	Pints 500	Pints.

36 and 38 Chapel street, Liverpool.

CLARUS & BROWN.

Exhibit 3, G. W. M.

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Exhibit 4, G. W. M.
U. S. District Court.

JOTHAM PARSONS et als.
vs.
DAVID OGDEN.

	£	s.	d.
July 17, 1851. Amount of charter-party ship "Hemisphere," from Liverpool to New York	1,500	0	0
July 17, 1851. Bill of provisions on board in Liverpool, berths, &c	279	2	5
	£1,779	2	5

	£	s.	d.			
Less bill paid by Mr. Taylor in Liverpool	115	17	10			
Less cash received in Liverpool, (passage money)	240	0	0			
Less amount of freight, per bills of lading	685	8	7			
				1,041	6	0
July 17, 1851. Amount due July 17, 1851,				£737	16	0

Equal to (exchange 10 per cent.)	$3,607	00
Interest on $3,607 from July 17, 1851, to Aug. 1, 1854, 3 years and ½ month, at 7 per cent	737	57
Sep. 4, 1851. To commutation money paid on 553 passengers	529	00
To cash paid for permits	14	20
" " health officer at quarantine	20	00
	563	20
Aug. 1, 1854. Interest on $563 20, from Sept. 4, '51, to Aug. 1, '54, 2 yrs. 10 mos. 28 days	114	77
Whole amount due Aug. 1, 1854	$5,022	54
Interest to Sept. 27, 1854	53	69
	$5,076	23

Exhibit 5, G. W. M.

LIVERPOOL, 55 *South Castle Street.*

CAPT'N WHITTLESEY:

DEAR SIR: We value the stores which you had on board the ship Hemisphere, and which stores were passed by the government inspector for the use of your steerage passengers, in the month of July, 1851, as follows: that is to say, at the market prices of that date:

74 loads oatmeal, 17,760 lbs., 27*s.* 6*d.* per load.....	£101 15 0
28 bags and 1 barrel, c. 58 00, rice, 11*s*.....	31 18 0
86 bags, c. 86 00, navy bread, 11*s.* 6*d*.....	49 9 0
2 barrels, c. 4 3 8, sugar, 21*s*.....	5 1 3
1 barrel vinegar, 43 gals. vinegar, 1*s*.....	2 3 0
16 barrels flour, 21*s*.....	16 16 0
4 casks, c. 26 3 0, molasses, 10*s.* 6*d*.....	14 0 11
4 chests tea, 320 lbs., 1*s*.....	16 0 0
	£237 3 2

We are, dear sir, yours respectfully,.
p. S. GARDINER & SON,
J. FLEURY.

Endorsed: P. Gardiner & Son bill, £237 3*s.* 2*d.* Parsons v. Ogden. Orig. list provisions in Liverpool. Exhibit No. 5.

(46.) 9; 400. U. S. District Court.

JOTHAM PARSONS and others
vs.
DAVID OGDEN.

C. Donohue, pr. lib. E. H. Owen, pr. respt.
Testimony on reference. Filed Jan'y 2d, 1855.

74 loads oatmeal, 27*s*.....		£99 18 0
28 bags, 58 cwt., 10*s.* 6*d*.....		30 19 4
86 bags, 87 2 0, 11*s.* 6*d*.....		50 0 6
2 barrels, 4 2 6, 21*s*.....		4 15 8
38 galls. vinegar, 10*d*.....		1 11 8
16 barrels flour, 20*s*.....		16 0 0
4 barrels, 26 2 16, 10*s.* 6*d*.....		13 19 9
4 chests tea, 328 lbs., 1*s*.....		16 8 0
74 oatmeal sacks, 10*d*.....		3 1 8
28 bread bags, 6*d*.....		0 14 0
		£237 1 7
350 berths, at 1*s.* 6*d*.....	£26 5 0	
B'khead.....	3 0 0	
Water.....	2 10 0	
Measurers.....	2 0 0	
Coal.....	2 10 0	
Medicines.....	4 0 2	
Caboose.....	1 0 0	
Wood.....	2 0 0	
		43 5 2
		£280 6 9

Endorsed: Exhibit B. Parsons v. Ogden. Act. List of provisions.

Commissioner's Report.

District Court of the United States, for the southern district of New York.

JOTHAM PARSONS and others
vs.
DAVID OGDEN.

In pursuance of a decretal order made in the above entitled cause, on the third day of July, in the year of our Lord one thousand eight hundred and fifty-four, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for the price agreed upon by the charterer and the price of stores furnished by the libellants, and charges paid by them, and to report thereon to this court with all convenient speed—

I, George W. Morton, the commissioner, to whom the matter was referred, do report, that I have been attended by the proctor for the libellant and respondent, and have taken and examined the testimony offered in support of the libellant's claim for the damages aforesaid, and do find that there is due to the libellant for balance due on charter-party, and bill of stores and provisions furnished by the ship to the passengers in Liverpool July 17, 1851, in which is included the charge of £281 12 7 for said bill of stores..... $3,619 21

Charges paid by ship in New York for passengers.... 563 20

Int. to Jan'y 1, 1855..... 976 93

Amounting in all to the sum of fifty-one hundred fifty-nine $\frac{34}{100}$ dollars..... $5,159 34

Dated the second day of January, A. D. 1855.

All which is respectfully submitted:

GEO. W. MORTON,
U. S. Commissioner.

BETTS & DONAHUE,
Proctors for Libellants.

Vol. 9, No. 400. United States district court for the southern district of New York. *John* Parsons et al. vs. David Ogden. Betts & Donohue, proctors for libell'ts. Commissioner's report. Filed the second day of January, 1850.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Tuesday, the second day of January, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable Charles A. Ingersoll, district judge.

JOTHAM PARSONS and others
v.
DAVID OGDEN.

On filing the report of George W. Morton, U. S. commissioner, by which there is reported due to the libellants the sum of $5,159 34, on motion of Messrs. Betts and Donohue, proctors for the libellants, it is ordered that the report be in all things confirmed and a final decree entered for the amount reported due, with costs to be taxed, unless the respondent file exceptions thereto within two days after service of a copy of this order.

Vol. 9, No. 400. United States district court for the southern district of New York. Jotham Parsons et al. vs. David Ogden. Betts and Donohue, proctors for liblts. Order for conf'n comm'rs report nisi.

Filed the second day of January, 1855.

U. S. District Court.

DAVID OGDEN
ads.
JOTHAM PARSONS and others.

Exceptions to the commissioner's report in the above cause on the part of the respondents:

First. For that the said commissioner has reported that there is due to the libellants for stores and provisions alleged to have been furnished by the ship for the passengers on the voyage in the charter-party mentioned, £281 12 7, whereas the said commissioner should have reported a much less sum therefor.

Second. For that the commissioner has allowed the libellants for charge paid by the ship in New York $563 20, whereas he should have allowed a much less sum.

Third. For that the commissioner has not allowed to the respondents any credit for the stores and provisions aforesaid remaining on board of the vessel after her arrival in this port, and which belonged to, but were not delivered to the respondents.

Fourth. For that the said commissioner has not allowed the respondent any credit for the loss of freight and passage money occasioned by the neglect and refusal of the libellants to take and receive on board freight and passengers, which they might and should have done under the charter, which freight and passage money amount to a large sum—that is to say, the sum of four thousand dollars and upwards.

Fifth. For that the commissioner has reported as due from the respondents the sum of $5,159 34, whereas the report should have been for a much less sum, if any; and also for that interest and exchange has been allowed, which ought not to have been.

And the said report is in other respects erroneous and insufficient.

New York, June 5th, 1855. E. H. OWEN,
Proctor for Respondents.

Endorsed: 9; 400. U. S. district court. David Ogden ads. Jotham Parsons and others. Exceptions to commissioner's rep't. E. H. Owen, proctor for respo'ts.
Filed Jan. 6, 1855.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Saturday, the thirteenth day of January, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable Charles A. Ingersoll, district judge.

JOTHAM PARSONS et al.
vs.
DAVID OGDEN.

This cause having been heard on exceptions taken by the respondent to the commissioner's report filed in this cause, and argued by the advocates for the respective parties, and due deliberation having been had in the premises, it is now ordered, adjudged and decreed by the court, that the exceptions be overruled, and on motion of Messrs. Betts and Donohue, proctors for the libellants, it is ordered that the report be in all things confirmed, and that the libellants recover in this action against the respondent the amount reported due, together with their costs to be taxed; and on like motion, it is further ordered, that a summary judgment be, and the same is hereby entered against the said David Ogden, the respondent, for the sum of five thousand one hundred and fifty-nine $\frac{84}{100}$ dollars, the amount reported due, together with the sum of the taxed costs, amounting in the whole to dollars, and that the libellant have execution thereon to satisfy this decree.

BETTS & DONOHUE, *Proctors for Libellant.*

Vol. 9, No. 400. United States district court for the southern district of New York. Jotham Parsons et al. vs. David Ogden. Betts & Donohue, proctors for libel'ts. Decree overruling exceptions taken to commr's report.
Filed thirteenth day of January, 1855.

U. S. District Court, southern district of New York.

DAVID OGDEN
ads.
JOTHAM PARSONS, JOHN A. MCGAW, Joshua Atkins, Edwin Atkins and Joshua Atkins, jun'r.

Please to take notice that the defendant in the above entitled action appeals from the final decree of the court therein.

Dated February 9, 1855.

Yours, &c.,

E. H. OWEN,
Proctor for Respdt.

To GEO. W. MORTON, Esq., *Clerk.*

Endorsed: 9; 400. U. S. district court, southern district of New York. David Ogden vs. Jotham Parsons et al. Notice of Appeal.

E. H. OWEN,
Respdt.'s Proctor.

Filed Feb'y 10, 1855.

U. S. District Court, southern district of New York.

DAVID OGDEN
ads.
JOTHAM PARSONS and others.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Edward H. Owen, proctor for the defendant, being duly sworn, says, that the final decree in this action was entered, as deponent is informed and believes, on or after the 13th day of January, 1855; that deponent, at the time of the decision of this court overruling the exceptions of the defendant to the commissioner's report herein, intended to appeal from said decree to the circuit court within the time allowed by the rules of this court, but, owing to a pressure of other professional business engagements and other reasons, deponent unintentionally omitted to serve the notice of appeal within such time, and his attention was not called to the fact that such time had elapsed until February 9, 1855; that deponent desires an extension of the time to perfect the appeal.

E. H. OWEN.

Sworn to before me February 10, 1855.

JOSEPH BRIDGHAM, *U. S. Com'r.*

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on the 10th day of February, 1855.

Present, Hon. Charles A. Ingersoll, district judge.

DAVID OGDEN
ads.
JOTHAM PARSONS et al.

On reading and filing the affidavit of E. H. Owen, and on motion of E. H. Owen, esq., defendant's proctor, it is ordered that the time for the defendant to appeal in this action be extended till the 15th day of February, 1855.

Endorsed: U. S. district court, southern district of N. Y. David Ogden ads. Jotham Parsons et al. Affi't and order extending time to appeal. E. H. Owen, def't's proctor.
Filed Feb'y 10, 1855.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Saturday, the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable Charles A. Ingersoll, district judge.

DAVID OGDEN ads. JOTHAM PARSONS.

On reading and filing the affidavit of E. H. Owen, and on motion of E. H. Owen, esq., defendant's proctor, it is ordered that the time for the defendant to appeal in this action be extended until the 15th day of February, 1855.

A copy from the minutes.

Vol. 9, No. 400. United States district court for the southern district of New York. David Ogden ads. Jotham Parsons. E. H. Owen, proctor for def't. Order to extend time to appeal till 15 Feb'y.
Filed the tenth day of February, 1855.

U. S. District Court, southern district of New York.

DAVID OGDEN ads. JOTHAM PARSONS et al.

SIR: Please take notice that William G. Lord, of No. 213 Henry street, in the city of New York, merchant, and Joseph Ogden, of No. 57, E. 17th street, in said city, merchant, will be offered and will justify as sureties on the appeal to the circuit court of the United States for the southern district of New York, before G. W. Morton, esq., a commissioner, &c., on the 17th day of February instant, at 11 o'clock in the forenoon, at the office of the clerk of this court, corner of Murray street and College Place, in the city of New York.

Dated February 12, 1855.

Yours, &c.,

E. H. OWEN,
Proctor for Def't.

To C. DONOHUE, Esq.,
Proctor for Lib'lt.

Endorsed: 9; 400. U. S. district court. David Ogden ads. Jotham Parsons et al. No. of offer and justification of sureties. E. H. Owen, clm't's proctor.
Filed May 17, 1855.

Due and sufficient service of a copy of within notice admitted.
BEEBE & DONOHUE.

February 13, 1855.

Bond for costs.

of the United States of America, for the southern district of New York, in the second circuit.

DAVID OGDEN, Respondent and Appellant,
vs.
JOTHAM PARSONS and others, Libellants and Appellees.

Know all men by these presents, that we, William G. Lord and Joseph Ogden, are held and firmly bound unto the above named libellants and appellees, in the sum of six thousand dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the seventeenth day of February, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas the above named appellants have prosecuted an appeal to the circuit court of the United States, for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOSEPH OGDEN, [L. S.]
WILLIAM G. LORD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 17 day of February, 1855, before me.

GEO. W. MORTON,
U. S. Com'r.

Circuit Court of the United States for the southern district of New York.

DAVID OGDEN, Appellant and Respondent,
ads.
JOTHAM PARSONS, JOHN A. MCGAW, JOSHUA ATKINS, EDWIN ATKINS and JOSHUA ATKINS, Jun'r, Libellants and Appellees.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit:

The petition of the above named appellant respectfully showeth,

that on or about the 17th day of October, 1851, the above named libellants exhibited their libel in the district court of the United States for the southern district of New York against David Ogden, the respondent, alleging, among other things, the making of a contract, civil and maritime, between the said libellants and said respondents, and a breach of said contract by and on the part of said respondent, and claiming over fifty dollars, praying, among other things, for the reasons set forth in said libel, that process in the nature of a warrant of arrest might issue against the respondent, with a clause therein that if the respondent could not be found, that then the marshal attach the goods and chattels of said respondent, in his district, to the amount mentioned in said libel; and in default of such goods and chattels, that then the marshal attach the credits and effects of the respondent in the hands of his garnishees, to said amount, to compel an appearance; and in default of such appearance, to answer the decree herein, and that the respondent appear and answer the matters propounded in said libel, and that the said district court would be pleased to pronounce for the said claim of the libellants, or for such other or different relief to the libellants in the premises as should to law and justice appertain, and also to condemn the defendant in costs.

That the said respondent, on or about the 24th day of January, 1852, filed an answer to the said libel in the said district court, alleging, among other things, that the respondent executed the said contract as agent for Messrs. Taylor and James, of Liverpool, who are the parties liable under the same, which was known to the libellants, and denying that the libellants on their part performed said contract in all things, and alleging that they violated and broke the conditions of said contract by them to be performed and fulfilled in various ways, and among other things in that respect set forth in said answer, and also denying, among other allegations in said libel contained, that the libellants were entitled to the relief demanded in said libel, and praying, for the reasons set forth therein, that the said libel might be dismissed with costs.

That the libellants, on or about the 22d day of June, 1852, filed their replication to said answer in the said district court, denying the matters alleged in the said answer, and praying as they had in said libel already prayed, as by reference to said libel, answer and replication, on file in the office of the clerk of said district court, will more fully appear.

That on or about the 15th day of June, 1854, the said cause came on to be heard before Hon. Charles A. Ingersoll, judge of the said district court, and the hearing thereof having been continued on the testimony and proofs adduced by the respective parties for several days thereafter, and the said judge having advised thereon on the 3d day of July, 1854, made a decree that the libellants recover nothing for demurrage, but that they recover in this action against

the respondents fifteen hundred pounds sterling, the price alleged in said libel to have been agreed to be paid by the respondent for the use of the ship, deducting therefrom the money which they had received to apply in part payment, and also that they recover for the price of the stores alleged to have been furnished the passengers, and money alleged to have been paid for hospital and commutation fees and quarantine expenses, and that it be referred to a commissioner to ascertain what is due to the libellants in those respects, and to report thereon to said district court with all convenient speed.

That, in pursuance of said decree, the matters therein mentioned and ordered to be referred were referred to George W. Morton, esq., commissioner, for the purposes therein mentioned; that the parties respectively attended before the said commissioner, and adduced their testimony and proofs on or about the 9th day of October, 1854, and from time to time thereafter until on or about the 27th day of December, 1854, on which day the cause was submitted to said commissioner, who, on or about the 2d day of January, 1855, made and filed his report in the said district court, that there was due to the libellants for balance due on charter-party, and bill of stores and provisions furnished by the ship to the passengers in Liverpool, July 17, 1851, in which was included the charge of £281 12 7 for said bill of stores, three thousand six hundred and nineteen dollars and twenty-one cents; for charges paid by ship in New York for passengers, five hundred and sixty-three dollars and twenty cents; interest to January 1, 1855, nine hundred and seventy-six dollars and ninety-three cents; amounting in all to five thousand one hundred and fifty-nine dollars and thirty-four cents.

That on or about the 2d day of January, 1855, the said Hon. Charles A. Ingersoll, judge of said district court, made a decree that said report of said commissioner be confirmed and a final decree entered for the amount reported due, with costs to be taxed, unless the respondent file exceptions thereto within two days after service of a copy of said order.

That on or about the 6th day of January, 1855, the respondent filed in the said district court exceptions to the said report of said commissioner substantially as follows, to wit:

First. That the said commissioner should have reported a much less sum than £281 12 7 as due to the libellants for stores and provisions alleged to have been furnished by the ship for the passengers on the voyage in the charter-party mentioned.

Second. That the said commissioner allowed the libellants for charges paid by the ship in New York five hundred and sixty-three dollars and twenty cents, whereas he should have allowed a much less sum.

Third. That the said commissioner did not allow to the respondent any credit for the stores and provisions aforesaid remaining on board of the vessel after her arrival in this port, and which belonged to, but were not delivered to the respondent.

Fourth. That said commissioner did not allow the respondent any credit for the loss of freight and passage money occasioned by the neglect and refusal of the libellants to take and receive on board freight and passengers, which they might and should have done under the charter, which freight and passage money amount to the sum of four thousand dollars and upwards.

Fifth. That the said commissioner reported due from the respondent the sum of five thousand one hundred and fifty-nine dollars and thirty-four cents, whereas such report should have been for a much less if any sum; and also for that interest and exchange was allowed by said commissioner, which ought not to have been allowed. And that the said report was in other respects erroneous and insufficient.

That said exceptions were brought on for a hearing before Hon. Charles A. Ingersoll, judge of said district court, on or about the 13th day of January, 1855, and counsel were heard for and against the said exceptions; and deliberation being thereupon had, the same were, and each and every of them was overruled, and said report of the said commissioner was confirmed, and a final decree on the same was, on or about said 13th day of January, 1855, entered in favor of the libellant against the respondent for five thousand one hundred and fifty-nine dollars and fifty-four cents, with costs to be taxed.

And your petitioner is advised and insists that the said decree is erroneous, inasmuch as the said libellants were not entitled to recover any sum whatever in the premises; or if any, a less sum than that in said decree mentioned.

And your petitioner, for these and other reasons, appeals from the whole of said decree against the said respondent to the next circuit court to be held in the said district; and in the said appeal he intends to have the said cause heard anew in the circuit court on the pleadings and proofs in the district court, and other proof to be introduced in the said circuit court; and he prays that the record and proceedings in the said district court may be returned to the said circuit court, and that the said decree may be reversed, or such other decree therein be made as to the said circuit court shall seem just, and that the appellees may be condemned to pay the appellant his costs and damages in the premises.

E. H. OWEN,
Proct. for Applnt.

F. B. CUTTING, *Advocate.*

Endorsed: U. S. circuit court south. dist. of New York. David Ogden, respdt. and appelnt., vs. Jotham Parsons and al., libnts. and appellees. Apostles. E. H. Owen, appl'nt's proctor.
Filed May 14, 1855.

Interrogateries to be administered to John Craig Taylor, a wit-

ness to be produced and examined in a certain cause pending in the circuit court of the United States for the southern district of New York, on appeal from the United States district court, wherein David Ogden is appellant and Jotham Parsons and others are respondents, on the part of the appellant, under and by virtue of the commission issued out of and under the seal of the said court, and hereto annexed.

First interrogatory. What is your name, age, residence and occupation; do you know the parties to this action, or either, and which of them?

Second interrogatory. Look at the paper writing hereto annexed, marked A, and say what it is, and when, if ever, it was delivered to you, and by whom it was so delivered.

Third interrogatory. Have you been heretofore examined as a witness in the above entitled cause on the part of David Ogden, under a commission? If yea, state whether or not the said paper hereto annexed, marked A, had been delivered to and received by you before you testified on that occasion; state whether or not at the time of such examination you had the same.

Fourth interrogatory. What did you do with the said paper writing A, afterwards? If you say you sent it out to Mr. Ogden, or otherwise, then state when and for what purpose it was so sent, and at whose request.

Last interrogatory. Do you know or can you state any other matter or thing which will tend to the benefit of the appellant in this action? If so, declare the same fully, as if particularly interrogated thereto.

E. H. OWEN,
Att'y for Appellant.

Settled subject to all legal objections and exceptions.
BEEBE & DONOHUE,
For Libl'nt.

Know all men by these presents, that I, David Ogden, of the city of New York, for and in consideration of the sum of one dollar to me in hand paid by John C. Taylor, of Liverpool, England, have remised, released, and forever discharged, and I do hereby, for myself, my heirs, executors, administrators and assigns, remise, release, and forever discharge the said John C. Taylor, his heirs, executors, and administrators, of and from all debts, demands, action and causes of action whatsoever, which I now have in law or equity, or which may result from or on account of the charter of the ship "Hemisphere," in controversy in a cause pending in the district court of the United States for the southern district of New York, between the owners of the said ship and me, and from any and all claims, liabilities, doings, and omissions on account of said charter.

In witness whereof, I have hereunto set my hand and seal this fifth day of April, in the year one thousand eight hundred and fifty-three.

DAVID OGDEN. [L. S.]

Sealed and delivered in the presence of—
FREDERICK BULL.

CITY AND COUNTY OF NEW YORK, *ss.*

On the fifth day of April, one thousand eight hundred and fifty-three, before me came David Ogden, known to me to be the same person described in and who executed the above instrument, and acknowledged that he executed the same.

GILBERT S. NIXON,
Com'r of Deeds.

JOHN YATES, Jr., *Commissioner.*

At the execution of a commission for the examination of witnesses in a cause between Jotham Parsons, John A. McGaw, Joshua Atkins, jr., liblnts. and appellees, and David Ogden, respondent and appellant, this paper writing was produced and sworn to John Cragg Taylor, and by him deposed unto, at the time of his examination, before—

JOHN YATES, JR.,
Commissioner.

13 March, 1857.

Deposition of John Cragg Taylor, (described in the commission hereunto annexed as John Cragg Taylor) a witness produced, sworn, and examined the thirteenth day of March, in the year one thousand eight hundred and fifty-seven, at the office of Mr. John Yates, jr., solicitor, 22 Fenwick st., Liverpool, in the county of Lancaster, in England, under and by virtue of a commission issued out of the circuit court of the United States of America, for the southern district of New York, and second circuit, in a certain cause therein depending, on appeal from the United States district court, and at issue between Jotham Parsons, John A. McGaw, Joshua Atkins, Edwin Atkins, and Joshua Atkins, jr., libellants and appellees, and David Ogden, respondent and appellant, as follows:

John Cragg Taylor, of Liscard, in the county of Chester, and kingdom of England, aged thirty-three years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the respondent and appellant, at the time and place above mentioned, doth depose and say, as follows:

First. To the first interrogatory he saith: My name is John Cragg Taylor; I am thirty-three years of age, and reside at Liscard, in the county of Chester, in England, and my occupation is

that of an outdoor freight clerk to Messrs. Alexander Taylor & Co., of Liverpool, merchants. I know the respondent and appellant, David Ogden, very well, and I know Jotham Parsons and John A. McGaw, two of the libellants and appellees, slightly, having been merely introduced to them. I do not know any of the other parties to the cause.

Second. To the second interrogatory he saith: I have looked at the paper writing marked A, annexed to the commission and interrogatories, also hereto annexed; it is a release from Mr. David Ogden, the respondent and appellant, to me, of all debts, demands, actions and causes of action whatsoever, which at the date of such release he then had against me, either at law or in equity, or which might result from or on account of the charter of the ship "Hemisphere," then in controversy in this cause, and from all claims, liabilities, doings and omissions on account of said charter. It was delivered to me, as near as I can recollect, within one month of its date, and certainly within two months—that is to say, before the fifth day of May, one thousand eight hundred and fifty-three. It was either handed to me by Messrs. Alex. Taylor & Co., of Liverpool, merchants, or it was forwarded to me direct by the said David Ogden; at this distance of time I am not able to say which.

Third. To the third interrogatory he saith: I was examined in the above entitled cause, in the month of August, in the year one thousand eight hundred and fifty-three, on the part of David Ogden, under a commission. The said paper writing marked A had been delivered to and received by me before I testified on that occasion, and at the time of such examination I had same in my possession.

Fourth. To the fourth interrogatory he saith: I retained the said paper writing A, in my possession for a considerable time—as near as I can recollect, about two years; and I then sent it, at the request of Mr. Ogden, to him; he applied to me to lend it to him. To the best of my recollection he did not state for what purpose he required it, nor do I know, except as I infer for the purposes of this cause.

Lastly. To the last interrogatory he saith: At the time I was examined as a witness in the month of August, 1853, I had no interest whatever in this cause or its result, nor have I now.

JOHN CRAGG TAYLOR.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 13 day of March, 1857, before—

JOHN YATES, JR.,
Commissioner.

Endorsed: In the circuit court of the United States of America for the southern district of New York. Jotham Parsons and

others vs. David Ogden. On appeal. Examination of John Cragg Taylor, a witness, taken before John Yates, jr., a commissioner, at Liverpool, the 13 day of March, 1857. Opened in open court and filed May 6, 1857.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday the twenty-second day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOTHAM PARSONS and others
v.
DAVID OGDEN.

The appeal in this case coming on to be heard, Mr. Donohue reads the evidence from the Apostles on the part of libellant and respondent.

Mr. Cutting argues on part of resp't and appellant.

Mr. Parsons is heard in reply.

Cur adv. vult.

At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

DAVID OGDEN, Respdt. and Applnt.,
vs.
JOTHAM PARSONS, Liblnt. and Appellee.

This cause having been heretofore heard, argued by the advocate of the respective parties, and due deliberation being thereupon heard, it is now ordered, adjudged and decreed, that the sum of twelve hundred dollars be deducted from the decree herein, and the remainder of said decree be in all things affirmed, without costs, on appeal to either party. S. NELSON.

U. S. Circuit Court.

DAVID OGDEN, Respdt. and Applnt.,
vs.
JOTHAM PARSONS, JOHN A. MCGAW, JOSHUA ATKINS, EDWIN ATKINS and JOSHUA ATKINS, Jr.

To the Supreme Court of the United States:

The appeal of David Ogden, the above named respondent and appellant, respectfully showeth:

That on the 17th day of October, 1851, the above named libellants filed their libel in the district court of the United States for the southern district of New York, against the said David Ogden, in a cause, civil and maritime, for the recovery of the respondent of the sum of $4,954 and upwards, for an alleged breach of charter-party; that the said respondent entered his appearance in the said district court and filed his answer to the said libel, and the libellants replied thereto, and such proceedings were thereupon had in the said cause, that on the 13th day of January, 1855, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the libellants recover against the respondent the sum of $5,159 $\frac{34}{100}$, together with costs. And that after such final decree, your petitioned appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew, upon the same with other testimony, and such proceedings were had in the said circuit court, that afterwards, and on the third day of December, 1857, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be modified by deducting therefrom the sum of twelve hundred dollars, and that in all other respects the said decree of the district court be affirmed, without costs of appeal to either party; which said decree of the circuit is, as this appellant is advised, erroneous, and ought to be reversed, so far as the same affirms the said decree of the district court for any sum whatever, and so far as it limits the claim of this appellant for damages, as therein specified, to the sum of twelve hundred dollars.

Wherefore this appellant appeals from so much of the said decree of the circuit court as adjudges that the libellant *are* entitled to recover of your petitioned any sum, to the Supreme Court of the United States, and respectfully prays that the said decree of the circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court may be reversed so far as it allows any sum to the libellants, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, Dec'r 3d, 1857.

E. H. OWEN,
Proc. for Applnt.

Endorsed: U. S. circuit court. David Ogden ads. Jotham Parsons and als. Copy petition of appeal. E. H. Owen, app'l'nt's proctor.

Circuit Court of the United States for the southern district of New York, in the second circuit.

DAVID OGDEN, Applnt.,
vs.
JOTHAM PARSONS, JOHN A. MCGAW, JOSHUA ATKINS, EDWIN ATKINS and JOSHUA ATKINS, Jr., Appellees.

Know all men by these presents, that we, David Ogden, Joseph Ogden, and James F. Secor, of the city of New York, are held and firmly bound unto the above named Jotham Parsons, John A. McGaw, Joshua Atkins, Edwin Atkins, and Joshua Atkins, jr., in the penal sum of ten thousand dollars, to be paid to the said appellees, for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the fourth day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named David Ogden has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, the decree rendered in the above suit by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellant, David Ogden, shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

DAVID OGDEN, [L. S.]
JOSEPH OGDEN, [L. S.]
JAMES F. SECOR.

Sealed, delivered, and taken and acknowledged this 5th day of December, 1857.

CHAS. W. NEWTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

Joseph Ogden, being duly sworn, says that he resides in the city of New York, and that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

JOSEPH OGDEN.

Sworn to this 5th day of Dec'r, 1857, before me.

CHAS. W. NEWTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
South dis't of New York, ss.

James F. Secor, being duly sworn, says that he resides in the

city of New York, and that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

JAS. F. SECOR.

Sworn to before me this 5th day of Dec'r, 1857.

CHAS. W. NEWTON,
U. S. Com'r.

Upon the above proof I approve of the sufficiency of the above named sureties to the above bond.

SAM'L R. BETTS.

New York, Dec. 5, 1857.

Endorsed: U. S. circuit court. David Ogden, appellant, vs. Jotham Parsons and als., appellees. Bond on appeal. E. H. Owen, appellant's proctor.

Filed Dec. 5th, 1857.

By the Honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Jotham Parsons, John A. McGaw, Joshua Atkins, Edward Atkins, and Joshua Atkins, jr.:

Whereas David Ogden has lately appealed to the Supreme Court of the United States from a decree rendered by the circuit court of the United States for the southern district of New York, in the second circuit, and the order founded thereon, directing the payment by the appellants of the damages and costs, exceeding the sum of two thousand dollars exclusive of costs, decreed to have been sustained by you in a suit wherein you are the libellants, and the said David Ogden is respondent, for an alleged breach of charter-party mentioned in the pleadings, and the said David Ogden having filed the security required by law upon his said appeal, you are therefore cited to appear before the Supreme Court of the United States, at the city of Washington, on the first Monday of December instant, and show cause, if any there be, why the decree and order named in the aforesaid appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New York, on the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-seven. SAM. R. BETTS.

Service of a copy of the within citation admitted.

N. Y., Dec'r 5, 1857.

BEEBE, DEAN & DONOHUE.

Filed Dec. 5, 1857.

Endorsed: U. S. circuit court. David Ogden, appl'nt, ads. Jotham Parsons and als, appellees. Citation. E. H. Owen, appellees' proctor.

Filed 15th Dec., 1857.

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SUPREME COURT OF THE UNITED STATES.

No. 104.

SIDNEY E. COLLINS, APP'T,

vs.

DRURY THOMPSON, WILLIAM F. CLEVELAND, and JAMES CAMPBELL.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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	Answers to direct interrogatories	1575	494
	" " cross "	1582	496
No. 31.	Deposition of H. Williamson—		
	Direct interrogatories	1588	497
	Objections and cross interrogatories	1590	498
	Answers to direct "	1594	499
	" " cross "	1597	500

		Original.	Print.
No. 32.	Deposition of Wm. J. Kennedy—		
	Direct interrogatories	1600	501
	Objections and cross interrogatories	1602	501
	Answers to direct "	1606	503
	" " cross "	1608	503
No. 33.	Deposition of Edward A. Lewis		
	Direct interrogatories	1611	504
	Cross " and objections	1613	505
	Answers to direct interrogatories	1619	507
	" " cross "	1622	507
"	Wm. Vickers direct and cross interrogatories	1611, 1613	504, 505
	Answers to " "	1626	509
	" " cross "	1629	509
No. 34.	Deposition of Delphine Lewis—		
	Direct interrogatories	1632	510
	Objections and cross interrogatories	1633	511
	Answers to direct "	1634	511
	" " cross "	1635	511
No. 35.	Deposition of Thomas C. Coyle—		
	Direct interrogatories	1636	512
	Cross "	1637	512
	Answers to direct interrogatories	1641	513
	" " cross "	1643	514
"	Deposition of A. M. Griffin—		
	Direct interrogatories	1636	512
	Cross "	1637	512
	Answers to direct interrogatories	1645	514
	" " " "	1647	515
No. 36.	Deposition of C. A. Bradford—		
	Direct interrogatories	1649	516
	Cross "	1650	516
	Answers to direct interrogatories	1650	516
	" " cross "	1652	517
	Exhibit A. Resignation of S. E. Collins as school commissioner	1652	517
	Certificate of commissioner	1653	517
"	Deposition to Thaddeus Sanford—		
	Direct interrogatories	1649	516
	Cross "	1650	516
	Answers to direct interrogatories	1654	518
	" " cross "	1655	518
No. 37.	Deposition of Douglas Campbell—		
	Direct interrogatories	1656	518
	Objections and cross interrogatories	1659	519
	Answers to direct "	1669	522
	" " cross "	1675	624
	Exhibits A. Account Collins' Property	1680	525
	" B. " " "	1684	528

		Original.	Print.
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	" " " cross "	1494	469
	Answers of Kirkbride to direct "	1495	469
	" " " " cross	1497	470
	Exhibit B. Building contract for stores	1498	470
	" C. Specifications " "	1501	471
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	Cross "	1509	474
	Answers to direct interrogatories	1511	475
	" " cross "	1514	476
"	Deposition of Peter Hamilton—		
	Direct interrogatories	1507	473
	Cross "	1509	474
	Answers to direct	1530	480
	" " cross	1533	481
No. 27.	Deposition of Wm. H. Platt—		
	Direct interrogatories	1536	482
	Cross "	1539	483
	Answers to direct	1544	485
	" " cross "	1549	486
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	Answers to interrogatories	1556	488
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	Direct interrogatories	1557	489
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	Direct interrogatories	1561	490
	Cross " and objections	1564	491
	Answers to direct interrogatories	1569	492
	" " cross	1572	493
No. 30.	Deposition of David Barton—		
	Direct interrogatories	1561	490
	Cross " and objections	1564	491
	Answers to direct interrogatories	1575	494
	" " cross "	1582	496
No. 31.	Deposition of H. Williamson—		
	Direct interrogatories	1588	497
	Objections and cross interrogatories	1590	498
	Answers to direct "	1594	499
	" " cross "	1597	500

		Original.	Print.
No. 32.	Deposition of Wm. J. Kennedy—		
	Direct interrogatories	1600	501
	Objections and cross interrogatories	1602	501
	Answers to direct "	1606	503
	" " cross "	1608	503
No. 33.	Deposition of Edward A. Lewis		
	Direct interrogatories	1611	504
	Cross " and objections	1613	505
	Answers to direct interrogatories	1619	507
	" " cross "	1622	507
"	Wm. Vickers direct and cross interrogatories	1611, 1613	504, 505
	Answers to " "	1626	509
	" " cross "	1629	509
No. 34.	Deposition of Delphine Lewis—		
	Direct interrogatories	1632	510
	Objections and cross interrogatories	1633	511
	Answers to direct "	1634	511
	" " cross "	1635	511
No. 35.	Deposition of Thomas C. Coyle—		
	Direct interrogatories	1636	512
	Cross "	1637	512
	Answers to direct interrogatories	1641	513
	" " cross "	1643	514
"	Deposition of A. M. Griffin—		
	Direct interrogatories	1636	512
	Cross "	1637	512
	Answers to direct interrogatories	1645	514
	" " " "	1647	515
No. 36.	Deposition of C. A. Bradford—		
	Direct interrogatories	1649	516
	Cross "	1650	516
	Answers to direct interrogatories	1650	516
	" " cross "	1652	517
	Exhibit A. Resignation of S. E. Collins as school commissioner	1652	517
	Certificate of commissioner	1653	517
"	Deposition to Thaddeus Sanford—		
	Direct interrogatories	1649	516
	Cross "	1650	516
	Answers to direct interrogatories	1654	518
	" " cross "	1655	518
No. 37.	Deposition of Douglas Campbell—		
	Direct interrogatories	1656	518
	Objections and cross interrogatories	1659	519
	Answers to direct "	1669	522
	" " cross "	1675	624
	Exhibits A. Account Collins' Property	1680	525
	" B. " " "	1684	528

	Original.	Print.
No. 38. Deposition of John H. Hastie—		
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UNITED STATES OF AMERICA,
Southern District of Alabama:

In Chancery.

Pleas before the Honorable the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama, at a Term thereof begun and held in and for said District, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-seven. Present, his Honor John Gayle, Judge of said Court.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WILLIAM F. CLEVELAND, JAMES CAMPBELL.

Be it remembered, that heretofore, to wit: on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-five, Sidney E. Collins, by K. B. Sewall, Esq., his Solicitor, filed in the said Court his bill of complaint against Drury Thompson, William F. Cleveland, and James Campbell, in the words and figures following, to wit:

In Chancery.

Bill.

To the Judges of the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

Sidney E. Collins, of San Antonio, and a citizen of the State of Texas, brings this his bill of complaint against Drury Thompson, William F. Cleveland, and James Campbell, all of Mobile, and citizens of the State of Alabama, defendants.

And thereupon your orator complains and says, that on the 27th of April, 1844, a suit was instituted in this Court, in equity, in the name of your orator as complainant, against the executors and heirs of Joshua Kennedy, deceased, James Innerarity, Samuel Kitchen, William Kitchen, James Campbell, and the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, as defendants. That the attorneys employed in prosecuting said suit, whose names appear upon the record, were Campbell and Chandler, a law firm then existing in Mobile, composed of John A. Campbell and Daniel Chandler. That said suit was prosecuted to a hearing at the April term of this Court, in 1847, when a decree was rendered in favor of the complainant for the south half of a tract of land situate in Mobile, and known as the Alexander Baudain, or Collins tract, and for an account of rents, &c., as will more fully appear by reference thereto.

Your orator further shows, that on an appeal to the Supreme Court of the United States, this decree was, on the 27th of Decem-

ber, 1850, affirmed, with an addition, and remanded, to be proceeded with in conformity to the opinion of that Court; 10 How. 174, 187. That after the return of the mandate from the Supreme Court, to wit: at the April term, 1851, of this Court, a decree was entered in the cause, dismissing the bill as to James Campbell and the Branch Bank, directing a division of the tract into north and south halves, vesting the south half in your orator, and in lieu of the account previously ordered, directing the defendants to pay ten thousand dollars in cash, or in other city lands to be valued, and the costs of suit. This decree, though drawn by John A. Campbell, and purporting to be in part by consent of parties, was entered on the minutes of this Court without your orator's knowledge or consent, and against the wishes and protest of Drury Thompson, at that time acting as your orator's agent, and besides dismissing the bill as to James Campbell and the Branch Bank, left open and unadjusted the very matter which it was most material to have definitively settled between your orator and the heirs and executors of Kennedy, to wit: the division of the tract by same line fixed and established upon the land. The Orange Grove Company, whose claims were conterminous with the Boudain tract on the north, had before this time encroached on the north part of the latter, which left its north boundary in dispute.

Suits were understood to be depending with regard to it, and more might be requisite to its determination; hence the dividing line indicated by the above decree was floating and incapable, without other suit, of actual location, and wherever it might ultimately be fixed, would divide blocks and streets diagonally, to the injury of both parties. It became, therefore, a matter of negotiation, and after some months' delay, or fruitless efforts, on the part of Mr. Campbell, was finally arranged between Wm. R. Hallett, the acting executor of Kennedy and your orator alone. By this arrangement St. Anthony street was made the dividing line, your orator taking all south of that street and one lot north of it, as the same is described in a deed executed by the executors and heirs of Kennedy to him, bearing date the 8th of July, 1851, which deed was afterwards executed and acknowledged, and at the next term of this Court, in December, 1851, confirmed by a final decree then entered in the cause.

The terms of settlement embraced, besides the land, a bond or covenant made by William F. Cleveland to Joshua Kennedy, to account for the proceeds of certain lands sold by said Cleveland under an agreement with Kennedy, upon which Cleveland was represented to be liable for a large amount, which bond or covenant was to be assigned and delivered to your orator. And your orator files herewith, as parts of this bill, marked respectively 1, 2, 3, and 4, a copy of said bill, original and final decree, and of said deed; and prays leave to refer to the same, should it be necessary so to do.

And your orator further shows to your honors, that during the summer, after the execution and delivery of said deed to him by the executors and heirs of Kennedy, he compromised with some of the tenants for their improvements, and was let into possession of the property.

Your orator further shows to your honors, that prior to the commencement of said suit, as well as during its progress, he was induced to execute certain deeds and instruments in writing, intended to divest him of his rights and a large part of said estate, for the benefit of the defendants, which he has since discovered were obtained by fraud, and which are in other respects illegal and void. The following narrative of events as they occurred, so far as known to your orator at the time of their occurrence, will best show the facts and circumstances under which he was induced to execute said papers.

About the 10th of January, 1844, your orator then residing on a farm near Liberty, in Texas, met in said town Drury Thompson, one of the defendants, and William D. Primrose. Your orator had known Thompson in Mobile many years before, when they were boys; but Primrose was a stranger to him. They were in company, and represented to your orator that they had been on business together in other parts of Texas, and were now on their return to Mobile; but hearing, on reaching Liberty, that your orator was living in the vicinity, and being tired, they had concluded to stop a day or two to rest, and to see him. Thompson expressed great pleasure in thus unexpectedly meeting with your orator, and referred to many reminiscences of their former acquaintance in Mobile. Your orator invited them to go home with him. Thompson accepted the invitation, and staid several nights at your orator's house. Thompson, among other things, and in a casual way referred to your orator's lands in Mobile and vicinity, and asked what had become of them; and when informed that they had been conveyed to Joshua Kennedy, he remarked Kennedy had become very rich in lands, and many persons in Mobile accused him of cheating in land matters. He then inquired what Kennedy had given for them, and said Kennedy was then endeavoring to extend the Dubroca claim over his (Thompson's) residence, and asked if your orator would not give him (Thompson) a quit claim deed of it. He said he had long been in possession of his residence and spent a good deal of money on it, and that with such a deed from your orator he would be able to keep Kennedy from taking his residence from him. That whatever advantage the deed might be to him, he would willingly pay it over to your orator, and that he did not know any other way to head old Kennedy off. Your orator replied, that though he had always been under an impression that Kennedy had in some way, he knew not how, overreached him in regard to his land; yet, having given Kennedy a deed, he disliked to give two deeds for the same land, and might make himself liable

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by so doing. Thompson assured him he might give as many quit claim deeds as he pleased and not make himself liable; that there was no danger, unless he made warranty deeds; that giving him (Thompson) a quit claim deed could in no way affect your orator, while it might possibly benefit him (Thompson) in his contest with Kennedy. Upon these and similar representations and persuasions, your orator finally consented to give him such a deed. On next meeting (Primrose) at the village, he and Thompson had some conversation together, and your orator was informed by Thompson that Primrose would draw the deed. Thompson, a Mr. Griffin, and your orator, then took horses and dogs and went into the woods a deer hunting. Thompson killed a deer, and during further intercourse on this occasion suggested to your orator, that he had better give him a deed for all the lands in Alabama or elsewhere he ever had any claim to as an heir of his father, Joseph Collins; that he (Thompson) was clerk of the County Court and keeper of the records, and if it was possible to recover anything he (Thompson) could find it out and do it; that he wanted to annoy Kennedy; that Kennedy had commenced the game with him, and he would do any thing he could to get even with him. That with proper deeds and powers of attorney he would on his return look into the matter, and if he could find out any clue whereby to sue Kennedy, he would sue him. That he (Thompson) had the smartest lawyer in Mobile to do all his business, and the very fact that his lawyer had brought suit would scare Kennedy into a compromise of four or five thousand dollars, in order to buy his peace. Thompson frequently remarked that refusing to make a deed to him could be of no benefit to your orator, as Kennedy already had your orator's title and was in possession. That his (Thompson's) only object in wanting a deed was to protect himself and annoy Kennedy; but that should anything be realized from it, your orator should have the benefit. In one of the interviews at the village, Primrose had represented that Thompson was worth some sixty thousand dollars. This was in the presence of Thompson, who did not dissent from it.

From these representations, which your orator believed to be true, he was impressed with the idea that Thompson was a man of influence and wealth. Having, therefore, great confidence in him as a man, believing him to be his friend, and hoping that some benefit might possibly arise from the acts suggested, your orator further consented to execute the deeds and papers required. Primrose was instructed to prepare them, and your orator accordingly made and delivered to Thompson the following deeds and papers, to wit: 1. A deed conveying to him in form the Dubroca tract near Mobile, and the land covered by the Alexander Baudain tract in the city of Mobile; this last being the same land described in the first of this bill of complaint, as recovered from Kennedy's heirs. 2. Two powers of attorney—one general as to all lands, the other

limited to the lands embraced in said deed, authorizing him to sue for, recover, compromise, or otherwise deal with them as he saw fit. 3. A bond in the penalty of seventy-five thousand dollars, conditioned that your orator should in no way interfere with him (Thompson) in the control or management of any of the matters arising under said deed and powers of attorney. Such was the character and effect of the deeds and papers thus executed by your orator to Thompson. They bore date on or about the 13th of January, 1844, and appeared to your orator to have been prepared with care and comprehensiveness.

Thompson stated that the object in having the papers drawn so strong was, that he might, if necessary, show them to the Kennedys, and thereby intimidate them. During Thompson's stay at your orator's house, he gave your orator a silver watch, and left with him a double barrelled gun. Immediately after the execution of the papers referred to, Thompson and Primrose seemed anxious to leave, and as there was no public means of conveyance, your orator procured them horses and accompanied them to Anahuac, at the mouth of the Trinity, some twenty-five miles distant from Liberty. On separating at this place, Thompson handed your orator fifty dollars. Whether this was intended as a consideration for the deed, or as compensation for services, was not stated. Your orator, as was evident to them, had been put to some inconvenience on their account. He was in poor health; his wife was confined to the house from a long spell of sickness, and he, therefore, considered these acts of Thompson in part as compensation for his services; but chiefly as presents from an old friend, on whom fortune had more kindly smiled.

Your orator further shows to your Honors that his father, Joseph Collins, was a deputy surveyor under the Spanish government in Mobile prior to the change of flags, and died in 1811, at which time your orator was about two years of age. That your orator, till about nine years of age, resided with his mother at Pascagoula, and after this in different places in the interior of Mississippi until he was fifteen, when he was apprenticed to a house carpenter in Mobile by the name of Moore, with whom he worked till he was near twenty-one. During all this time your orator's entire attendance at school, which was not continuous, did not exceed a year; and when he left the carpenter's shop in January, 1830, he could hardly write his name. He next went to Covington, Mississippi, where he remained till 1836, and then removed to Texas. At the time your orator executed the deed and papers to Thompson in January, 1844, he had been absent from Alabama some fourteen years; had scarcely any knowledge of the estate left by his father; never had the possession of his father's papers; knew nothing of their contents; knew nothing of the nature or validity of his father's land titles, or of the value of lands in or around Mobile. He did not even know that his father left a will till more than a year after this

date. No information upon any of these matters were given to your orator by Thompson in the interviews referred to, although your orator has since learned that he was familiar with them, but on the contrary all his statements and acts were calculated to impress your orator with the idea that these titles were of no value to your orator, though they might possibly be of some use to Thompson in his alleged controversy with Kennedy. Such were the circumstances and impressions of your orator when he separated from Thompson at Anahuac, in January, 1844; and thus things remained with him until about the middle of January, 1845, when Thompson again called on your orator. He now represented that he had left Mobile with his wife for the purpose of taking her to Havana for the benefit of her health, but after reaching New Orleans, had concluded to change his course and take her to visit an old acquaintance, a Mrs. Wharton, who lived on the Brasos in Texas, where he had just left her. He brought some presents to Mrs. Collins, and your orator referred again to his controversy with Kennedy, and said he had brought a suit against him in your orator's name. Your orator expressed surprise at this, and asked why the suit was not brought in Thompson's own name, as he had a deed; to which he replied the suit was so brought because it looked better in the name of the original owner. He further said he had not much confidence in the suit, but had got the Kennedy's badly frightened, and it was probable they would send some one to see your orator about it. That he had spent a good deal of time and money on the case, and your orator must not answer any proposition the Kennedys might make without consulting him, Thompson. That it had cost him already four thousand dollars, and your orator must be on his guard, or he might say something that would ruin the case. That if a person should be sent by the Kennedy's he would first depreciate the claim, and then perhaps offer something small in the way of a compromise, and if possible during the interview would pick up some word or expression dropped by your orator that might be used to ruin the suit.

This was the first intimation your orator had that a suit had been commenced. At this visit Thompson also stated, that if anything should be recovered, the shares of your orator's deceased brothers (George E. and Joseph) would vest in their mother as their heir; this was understood to be the law of Texas, and your orator supposed, therefore, that Thompson's statement was correct, and that in no event would your orator's share be more than a third of any recovery. Having produced these impressions on your orator, Thompson left for Galveston, to which place your orator accompanied him, and received from him fifty dollars. In a few days after your orator had returned from Galveston, he was called on by a person representing himself as Mr. Platt, from Mobile, stating that he had business in other parts of Texas, and that as he was leaving Mobile, a Mr. Aikin placed in his hands a letter requesting

him while in Texas to inquire for Sidney E. Collins, and if he met him, to ascertain whether he knew of the existence of a suit in his name in Mobile against the heirs of Kennedy. He stated that Kennedy's heirs looked upon it as a vexatious suit which ought not to have been brought, but that they did not fear the result. They were opposed, however, to going to law, and would give to terminate it what it would cost them to litigate it, but no more; and this only on condition that your orator would retract all the allegations in his bill which were derogatory to the character of Joshua Kennedy. Finding that your orator was indisposed to accept his proposition for a compromise, Mr. Platt expressed a strong desire to have your orator go to Mobile and see the defendants before the next term of the Court, and offered to pay his expenses if your orator would accompany him on his return; to this your orator assented.

Soon after reaching Mobile your orator called on Mr. Thompson at his office, and while there was introduced to John A. Campbell, who happened to come in, as the lawyer who had charge of the suit. After Mr. Campbell had left the office, your orator was particularly charged by Thompson not to obtrude himself upon Mr. Campbell, as he was a person who managed things in his own way, and did not like to have his clients around him. That he was an eminent lawyer; a man of high character, who would do everything right, but would suffer no interference. After some days, your orator in company with Thompson called at Mr. Campbell's office. Your orator spoke of the interview with Mr. Platt, and the offers made by him, but Mr. Campbell advised against a compromise, as did also Mr. Thompson. Your orator remained in Mobile till after the April term of the Court, but had but few interviews with Mr. Campbell, and derived from him no particular information as to the suit, his bill, or his rights. The conversation was on every occasion merely general, Mr. Campbell appearing indisposed to refer particularly to the subject.

Having confidence in Thompson's statement that all was right, your orator returned to Texas, and thus things remained until January term, 1847. In the mean time your orator visited Mobile at every regular term of the Court; and on these occasions it was so arranged that your orator was the guest of Thompson, staying at his house, at his, Thompson's, particular request. Thompson appeared very solicitous lest your orator should in conversation with others, in some way unguardedly commit himself to the prejudice of the suit. Your orator was repeatedly cautioned not to converse about the suit with any one but Thompson himself, and particularly to avoid Primrose as a dangerous man, and to have nothing to say to him. Thompson seemed desirous of producing an impression on your orator's mind, that your orator was exposed on every hand to inimical interests and agencies, and that safety to his rights lay only in a careful avoidance of all reference to them

in the presence of others. Your orator was again advised not to trouble Mr. Campbell by calling on him, and the consequence was, that your orator approached only Thompson on the subject, and was seldom with any one else during his visits to Mobile. Thompson frequently referred to the large sums of money he had paid out on account of the suit, as well as to the heavy liabilities he was under in consequence of carrying it on. Such references were made every time your orator came to Mobile, and in January, 1847, in particular, Thompson stated that he had paid out and was liable for near ten thousand dollars, which amount was increasing as the suit went on. Believing these statements to be true, your orator felt that Thompson deserved from him some adequate provision for compensation, and from the relations existing between them your orator was disposed not only to be just to him but exceedingly liberal. In one of his previous visits your orator had ascertained that by the law of Alabama, the rights of his deceased brother George had vested in him as his heir, and that your orator would, therefore, in case of recovery, be entitled to the whole of it. Your orator, therefore, proposed to Thompson to give him what was equivalent to his brother George's share, that is, after paying all costs and charges out of any recovery, to divide the residue equally between them, share and share alike. This proposition appeared to be perfectly satisfactory to Thompson, and he requested your orator to go with him to Mr. Campbell's office where it was stated, put into shape in writing by Mr. Campbell, and executed and delivered to Thompson by your orator.

There was no indenture or counterpart, and your orator has no copy. The original must be in the hands or under the control of Thompson, and your orator prays that he may be required and produced on the hearing of this cause if necessary, in order to its being cancelled or delivered up. This transaction occurred your orator believes in January, 1847.

The next day your orator requested Thompson to give up the papers executed in Texas in 1844, and hereinbefore referred to. He at first tried to evade this request, by saying he wanted them to keep the Kennedys from annoying him with the Dubroca claim. This occurred in the court-house. While engaged in the conversation, Mr. Campbell happened to come in, and your orator remarked to him, that Thompson still held the deed and papers given him in Texas in 1844, as well as the one given him the previous evening. Mr. Campbell replied that holding them both would do Thompson no good, but rather an injury. Thompson then produced the old deed, and your orator believes put it into the fire. The power of attorney was handed to Mr. Campbell, who entered on it a reference to the new arrangement made the previous day, and gave it back to Thompson, at the same time remarking that your orator need feel no uneasiness about the deed given in Texas, for it was not worth the snap of his finger. That a deed of land made by a per-

son out of possession was void. Your orator states that, previous to this, he had at the request of Mr. Campbell, signed an obligation to pay Campbell and Chandler a fee of twenty thousand dollars.

Thompson had before explained to your orator that Campbell and Chandler by agreement with him were at first to receive $25,000 to recover the Dubroca and Baudain tracts, but that this agreement had been modified to twenty thousand for the Baudain tract alone, and your orator's contract was a confirmation of this.

After the hearing in this Court, at the April term, 1847, your orator returned to Texas, where he remained until February, 1851, after the decision of the case on appeal by the Supreme Court.

He then come to Mobile, and on the day of his arrival met Mr. Campbell, who requested your orator to come to his office that evening. Your orator accordingly went there in company with Drury Thompson, and there found assembled together, John A. Campbell, William F. Cleveland, James Campbell, and William D. Primrose. John A. Campbell then said that these four gentlemen, referring to William F. Cleveland, James Campbell, Drury Thompson, and William D. Primrose, had been interested in the suit from the outset, had all done valuable service, besides advancing large sums of money in carrying it on, and it was desirable that a settlement should then be agreed on before any hard feelings should arise. What service had been rendered by any one of them, or what amount of money had been advanced, was not stated. The statement was general, of valuable services, and large advances merely. This announcement of Mr. Campbell, as well as the meeting with these gentlemen on this occasion, was a perfect surprise to your orator, and the first intimation he ever had that Cleveland, James Campbell, or Primrose claimed, or pretended to claim any interest in the matter, or ever rendered any service, or paid any money in the case, except that your orator had understood that Primrose had been employed to attend to the taking of some testimony.

Before, however, your orator could collect himself to make reply, James Campbell proposed to leave the matter to John A. Campbell to decide. This proposition was received with assent by the other gentlemen, and a response appeared to be expected from your orator. Compelled, therefore, under these circumstances to reply, your orator said that this was a claim wholly before unknown to him. That your orator had, as Mr. John A. Campbell knew, an agreement with Mr. Thompson, which was certainly a liberal one on the part of your orator. That he wished to do what was right, that he knew nothing of the services said to be rendered by these gentlemen, or the money advanced by them. That he supposed his counsel was acquainted with the facts, and he could not therefore object to referring the matter to him as had been proposed. Mr. John A. Campbell then further stated that the suit was not yet ended, that there was an account to be taken of rents, and profits,

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and proceeds of sales, which, if liquidated, as he expected it would be, might take some two or three years more to get through with. That the question of boundary was also open. That the north line of the Baudain grant interfered with the Orange Grove, about which a suit was then pending between Hall and Carter, and the Orange Grove Company, that no division could be made between your orator and the Kennedys until this boundary was settled. That these gentlemen, referring to Cleveland, James Campbell, Thompson, and Primrose, had not only been of great service, but would still be required in getting proof as to the rents and the boundary. Further advances of money also might be required, and the case might again go to the Supreme Court on these open points, which would require still larger advances, and that in view therefore of all the circumstances, he thought these gentlemen were entitled to two-thirds of all that might be recovered, or one-sixth each. This decision seemed to be at once assented to by all the gentlemen referred to except Primrose, who objected that he had done more in the case than any of them, and that the division ought to be in proportion to the services rendered by each. Mr. John A. Campbell appeared to pay no attention to the objection of Primrose, but proceeded at once to draw up an instrument in writing for the purpose of carrying into effect his decision, which, omitting the name of Primrose, gave to Thompson, Cleveland, and James Campbell, two-thirds of the whole property recovered, whatever it might be. This instrument was immediately executed by the parties named in it, and the next morning your orator met Thompson, Cleveland, James Campbell, and Primrose, at the office of the latter by request, and was then required by them to enter into a covenant to obtain his wife's relinquishment of dower. For this purpose Thompson copied the paper executed the previous evening at Mr. Campbell's office, adding at the end the covenant required. In the new form it was again executed in triplicate, and bore date the fifteenth day of February, 1851, a copy thereof is hereto annexed as a part of this bill marked Exhibit A. And your orator further shows, that the whole time occupied in consummating this transaction in the office of John A. Campbell was not over an hour. That your orator was wholly unprepared to act with any judgment in a matter so deeply affecting his rights and interests, because wholly without the requisite knowledge to guide him, was unadvised, both as to the object of the meeting, and the persons who were to be present—supposed he was to meet only Thompson and Mr. Campbell—had no time for reflection; no opportunity for private consultation with his counsel, or supposed friend; had not seen the opinion of the Supreme Court; had not even read the bill in the case; was not in possession of the property; had no information of its value, nor idea of the amount he was thus suddenly called on to give away. In signing this instrument your orator was guided solely by his confidence in John A. Campbell and

Thompson, and his belief of the truth of their statements. He had just heard of his success in the suit, and was disposed to deal liberally with those who had aided him, and though surprised at the number of the claimants, and the amount awarded them, he yet considered that it was the judgment of his own counsel and attorney, and felt bound therefore to yield to it.

At the meeting in the office of Primrose the next morning, much was said to your orator about the advantage of having Campbell and Cleveland interested in the case, both on account of their influence and means. Cleveland spoke particularly of the commercial ability of James Campbell, and of his money, and his willingness to advance money to improve the property. It was also stated first in the office of Mr. Campbell, and again in that of Primrose, that the deeds or agreements there executed, were never to be put upon record, but that after your orator was put into possession of the property, and the boundary was settled, new deeds were to be made. It was also understood among the said parties that the real estate recovered must include all south of St. Anthony Street, and the proceeds of the sales made by Kennedy, at least ten thousand dollars, besides the rents and profits. Such was the apparent condition of affairs when your orator in March or April, 1851, still retaining confidence in John A. Campbell and Thompson, and leaving matters as before in their hands to be wound up, returned to Texas. In May thereafter, while in Texas, your orator received from Thompson a letter, a copy of which is hereto annexed marked Exhibit B. This letter for the first time created a suspicion in your orator's mind that all was not right, and on his return to Mobile in June, he found that no progress whatever had been made in the settlement of the suit, and that the difficulty was not with the executors and heirs of Kennedy, but with your orator's solicitor Mr. Campbell, who, with others, had depending your orator's suit, as your orator was afterwards informed, become interested by purchase in the lot of land originally sold by Joshua Kennedy to Campbell and Cleveland. This lot was at the northeast corner of St. Louis and Water Streets, containing one hundred feet on each street, and was within the boundary of the south half of the land recovered by your orator. John A. Campbell insisted on having an alley on two sides of this lot, and he founded his claim on some alleged agreement made between Kennedy, and Campbell, and Cleveland. This claim was finally presented by John A. Campbell in connection with his claim for a fee, and made a sine qua non in one form to any amicable settlement with him, as will appear by his letter of July 16, 1851, addressed to your orator, Thompson, Cleveland, James Campbell, and Primrose, a copy of which is hereto annexed as a part of this bill marked Exhibit C. After the receipt of this letter, which was handed to your orator by Cleveland, James Campbell and Cleveland withdrew all opposition to the claim for alleys. It was a new matter to your orator, which he did not understand,

and of the validity of which he could form no opinion. Your orator still had confidence in the legal opinion of John A. Campbell, and seeing his expressed determination to have the alleys or to litigate the right to them "in every way direct or indirect" in his power, your orator could see no way to resist the claim, and felt himself compelled to yield to it. A deed was accordingly executed bearing date the 19th of July, 1851, to John A. Campbell, Moses Wearing, and Joseph Wiswall, conveying a thirty foot alley on the north side, and a twenty foot alley on the east side of said lot. This deed was made by your orator, Cleveland, and James Campbell, but not by Thomson, and a copy is hereto annexed marked Exhibit D.

Your orator settled the fee of John A. Campbell, which, so far as he knew, had never been questioned, by eleven notes made by your orator and James Campbell, bearing date on or about the 1st July, 1851. One for ten thousand dollars, payable ten years after date, and ten of eight hundred dollars each, payable in one, two, three, four, five, six, seven, eight, nine, and ten years respectively after date, and secured by a mortgage on a part of the land. The fee due Chandler was also settled by agreement with him, by five promissory notes payable respectively in one, two, three, four, and five years from the 2d June, 1851, for two thousand dollars with interest added, made by James Campbell to the order of and endorsed by your orator, and secured also by a mortgage on a part of said land.

The fee due John Sergeant for attending to the case in the Supreme Court was settled by two promissory notes of $1,500 each, payable with interest in 1852 and 1853 respectively, which have since been paid by your orator.

Having thus arranged all the matters growing out of the suit, and being obliged to leave the State for a time, your orator constituted James Campbell and Cleveland his attorneys during his absence, by a letter bearing date July 16th, 1851, a copy of which is hereto annexed, marked "Exhibit E." They were thus constituted, because of the relations supposed to exist between them and your orator, and because they were represented to be experienced and capable business men.

After the return of your orator to Mobile, arrangements were made for improving the property and paying the debts. For this purpose ten thousand dollars was borrowed of William Jones, Jr., the principal payable in five years, the interest annually, and secured by a mortgage on a part of the property, bearing date March 17th, 1852. Portions of the property were afterwards, at different times in 1852 and 1853, sold to different persons, the proceeds altogether amounting to about ninety-two thousand dollars; and this afforded your orator the first evidence of the great value of the estate he had recovered.

The building contracts were made in the name of Collins and Cleveland, also some of the leases of the improved property. This

was done at the instance of Thompson, Cleveland, and Campbell, and before your orator had discovered any of the frauds which they had practised on him. His suspicions were at first excited by the singular remarks made by these parties, and their anxiety to obtain from him some confirmation of the deed of February, 1851, and became at length painfully increased, so much so, that your orator felt compelled to seek legal advice. For this purpose your orator applied to Daniel Chandler, Esq., and stated to him his belief that he had been overreached in the deed or agreement of February, 1851, and that he might be obliged to question its validity as soon as the property could be released from its incumbrances; and stated that he did not wish to do any act that could be considered as in any manner ratifying that instrument. Your orator also stated that he was willing to make them compensation out of the rent for any service they had rendered him. Mr. Chandler advised your orator to notify the tenants that he claimed the whole property, but was allowing Cleveland to have a part of the rent in compensation for services. It was in consequence of this advice that your orator consented to lease any part of the property in the name of Collins and Cleveland. Your orator considered that he had employed Mr. Chandler, or the firm of Chandler, Smith, and Herndon, of which he was then a partner, as his counsel. He frequently consulted with him on the subject until the summer of 1854, when your orator was informed that said firm were retained by Campbell and Cleveland. A few weeks prior to this your orator had addressed a letter to John A. Campbell, then Judge Campbell, stating, in substance, that your orator had discovered that he had been defrauded by Thompson, Cleveland, and Campbell, and wishing him to use his influence to get them to do your orator justice; and offering, through him, to give each of them a store of the value of $18,000, for an amicable settlement. This letter also stated that your orator had employed Messrs. Chandler, Smith, and Herndon, to bring suit in case the matter could not otherwise be arranged. This letter has remained unanswered, and though marked *confidential*, has been, your orator is informed, communicated to the defendants, or some of them. Your orator has no copy of this letter, and speaks of it only from recollection. Your orator further shows, that the portion of the property leased in 1853–4 in the name of Collins and Cleveland, was again in 1854 leased for 1854 in the same names by Cleveland; but that this was without your orator's knowledge or consent, and that Cleveland had no authority to use your orator's name in any way or form whatever. Your orator further shows, that soon after the deed of February, 1851, was executed, Thompson and Cleveland began to talk of things that were in the way of a quiet possession of the property. They said there was an older title—the Louis Baudain grant. That Primrose could ruin the title; that he knew of a large debt owing by your orator's brother George in Mississippi, amounting

to some fifty thousand dollars, which the property could be made to pay. That he was an unprincipled man, could have anything proved he wished, and that it might be dangerous to your orator's personal safety to associate with him. That these and similar statements put your orator in such dread of Primrose, that he was afraid to speak to him, and avoided him whenever he could.

Your orator further shows, that after his refusal to sign an instrument in writing, presented him on behalf of Thompson, Cleveland, and Campbell, for the purpose of obtaining a confirmation of their claim to two-thirds of said property, the said Thompson and Cleveland attempted to frighten your orator into compliance. They said unless your orator confirmed their claim, he should lose the whole property. That your orator was an alien both to the Spanish and American governments, and that by a law of Mississippi Territory the land of all aliens escheated to Jefferson College. That this law was in force at the time of the death of your orator's father, and that it would not be a hard matter to escheat half the property in Mobile. They also said there were secret frauds about the suit, which, if known, would upset it. Cleveland said there was a fraud in it, committed by Primrose and John A. Campbell, which, if exposed, would throw the whole property back into the hands of the Kennedys. That he (Cleveland) would tell Dr. Hastic, who was the bull-dog among the Kennedy's heirs, and he would at once bring suit and recover the property back. That he (Cleveland) was able to live without it, and did not wish to leave his children rich.

In this manner your orator was continually disquieted and harassed until January, 1855, when, having failed in their object by threats, Cleveland changed his plan, and attempted to regain your orator's confidence by offering to redress his wrongs.

He now said that Primrose was acting wrong with your orator in the Kribs matter, and requested that this might be repeated to him, and that he might be told that he could and must make it right. He also said he could tell things of Primrose that would make the hair rise on one's head. Such are the facts and circumstances of the case, so far as known to your orator from January, 1844, to February, 1855; but they constitute, unfortunately, not its whole history. There was an underplot previously planned, and during the whole time artfully concealed from your orator by the defendants, which, disclosed, exhibits the transactions in a different light. This underplot of fraud, suspected in part merely by your orator in 1852 and 1853, was not fully discovered and made known to him till after January, 1855, and your orator affirms that by no diligence on his part could it sooner have been discovered by him. From the facts and circumstances now known to him and believed to exist, your orator shows to your honors and specifically charges as follows, to wit:—

1st. That as early as 1842 the defendants, Thompson and Cleve-

970.

land, had combined together, in connection with Primrose, to obtain by unfair practices and circumventions, for their own sole use and benefit, all the real estate to which your orator's father was in any wise entitled at the time of his death, and particularly "a piece of land in Mobile, bounded on the north by State street, on the south by St. Louis street, on the west by Royal street, and on the east by the river," which is the same as that covered by the Alexander Baudain grant, or Collins tract, hereinbefore referred to.

2d. That this combination to defraud your orator was based upon the legal opinions of John A. Campbell and Daniel Chandler previously and separately given, the one in writing, the other verbally, after a thorough examination of his title, commenced as early as 1839, which opinions were favorable to its validity and to its capability of being established by suit; and upon the expressed willingness of said Campbell and Chandler to undertake as lawyers its enforcement against the representatives of Joshua Kennedy.

3d. That before Thompson came to Texas, in 1844, he and his confederates had also obtained the opinion of William J. Vandegraff, an able lawyer then residing in Mobile, as to your orator's title and right, which corresponded with those of Campbell and Chandler; and had also seen the testimony of Samuel Kitchen taken in the suit of The Heirs of William E. Kennedy *vs.* The Executors and Heirs of Joshua Kennedy, afterwards referred to in your orator's bill of complaint against Kennedy's heirs and others, and were fully advised of its effect.

4th. That previous to January, 1844, Campbell and Chandler were employed by Thompson, Cleveland, and their confederates, as their attorneys and counsellors to advise them as to the course to be pursued, and to bring suit upon your orator's title when it should be obtained by them.

5th. That the object of the visit of Thompson to Texas, in January, 1844, was not business in other parts of it, as he fraudulently pretended, but solely to find out your orator, and obtain from him his title to all said lands, and his irrevocable power of attorney, so as to enable Thompson and his confederates exclusively to manage and control the same to their own sole use and benefit.

6th. That in the interview in Texas, in January, 1844, Thompson was acting under the advice of John A. Campbell. That the deed, power of attorney, and bond there executed by your orator to Thompson, were not drawn there impromptu by Primrose, as your orator was led to believe, but were copies from drafts previously prepared for the purpose by John A. Campbell in Mobile.

7th. That the statement of Thompson on this occasion, that Kennedy was trying to take his residence from him by extending the Dubroca tract over it, was without any foundation in truth, and was intended by Thompson to excite the sympathy of your orator in his behalf, and to form an excuse for asking for a deed. That his residence in the country was in itself too inconsiderable, and in

its position too remote from any claim of the Kennedys, to have either excited their cupidity or attracted their notice. It was more than a mile west of the west line of the Dubroca tract.

8th. That before the suit was commenced, it was distinctly agreed and understood by and between Thompson and his confederates, under the advice of John A. Campbell, that your orator should be kept in ignorance of its existence, and his residence should be concealed from the defendants.

9th. That to effect this purpose in part, your orator, though well known to Thompson, his confederates, and solicitors, to be a citizen of Texas, was yet in the bill of complaint in this Court described as a citizen of the State of Missouri.

10th. That the suit was not brought in your orator's name from choice, or "because it looked better in the name of the original owner," as Thompson falsely pretended; but only from necessity, because the right could not be enforced in any other name; all of which was well known to Thompson and his confederates when said suit was brought.

11th. That James Campbell was not an original party to the combination against your orator, but was admitted to it only in December, 1844, about seven months after the suit was commenced. His gross property was embraced within the bounds of the land claimed, for which he held the warranty of Joshua Kennedy; and this, in case of eviction by your orator's claim, would be available for more than thirty thousand dollars. He was also able to make any advances in money which might be requisite for carrying on the suit. These considerations furnished sufficient motives to both parties for his admission to a share in their speculation; but none whatever to your orator for dividing with him his inheritance.

12th. That the visit of Thompson to your orator in Texas, in January, 1845, was for the sole purpose of anticipating that of Mr. Platt hereinbefore referred to, and thereby to prevent any unfavorable impression that might otherwise have been made upon your orator by a divulgence to him of the existence of the suit from the other side, as well as to guard your orator from any act that might have been prejudicial to Thompson and his confederates; and that a knowledge on their part of the intention of the Kennedys to send a messenger to your orator, was the only thing that compelled them to hurry Thompson off.

13th. That the statements of Thompson, on this occasion, as to the purpose of his visit, as on the previous one, were untrue, and intended to deceive your orator, and conceal from him the real importance of the suit, by making the reference to it appear as merely a secondary and accidental matter. That his statement also as to the descent of the estate of your orator's brothers, though in accordance with the law of Texas, was not with that of Alabama, which alone governed the case; and that this was well known to Thompson, but that he misstated the law on purpose to make your

orator believe that his interest was but one-third, even should any recovery whatever be had.

14th. That the visit of your orator to Mobile with Platt, in February, 1845, was unexpected to Thompson, Cleveland, and Campbell, and their solicitors, and was unwelcome. That it was expressly agreed among them that your orator should be kept in ignorance of the agreements which they had entered into in regard to his estate, as well as of its value, and for this purpose it was agreed between them and Primrose that the latter should not converse with your orator on the subject, and that your orator should be dissuaded from making any inquiries of him or others about the said suit or estate. That this is the reason why Thompson so frequently spoke to your orator disparagingly of Primrose, and why he was so solicitous that your orator should converse with no one on the subject of the suit or the matters involved in it, except himself.

15th. That by the agreement made by your orator with Campbell and Chandler for a fee, they became his attorneys and counsel in the case, and this relation continued until after the entry of the final decree in the cause, in December, 1851; yet, on the part of said Campbell and Chandler, it was no more than a nominal relation. They considered their obligation to act as the counsel of the combination paramount, and never failed to sacrifice your orator's rights and interests whenever these came in conflict with the interests and wishes of the defendants, Thompson, Cleveland, and Campbell.

16th. That the statement of Thompson as to his large advances and heavy liabilities, so often and so speciously made to your orator from January, 1845, to January, 1847, were, if not wholly untrue, as your orator now believes them to be, the grossest exaggerations, and intended falsely to impress your orator with his magnanimous friendship, and the great cost of maintaining the suit; and to induce your orator to offer him as a compensation, a large part of the property that might be recovered.

17th. That the agreement obtained from your orator in January, 1847, by Thompson for the benefit of himself and his confederates did not long satisfy their insatiate appetite for gain. Success had emboldened them, and before the suit was terminated new elements were not wanting to increase and strengthen their demands; alleys would greatly increase the value of the Campbell and Cleveland lot, now become the property of John A. Campbell and others. These could be secured only by the aid of Campbell and Cleveland, and what would thus be lost to the combination, would be more than compensated by the lion's share awarded them. The results were the deeds of the 15th February, and the 19th July, 1851.

18th. That the meeting at the office of John A. Campbell in February, 1851, hereinbefore referred to, was previously agreed on by and among the defendants, Thompson, Cleveland, and the Camp-

bells; the programme prepared; the parts assigned; the decision of the arbitrator known; and his influence relied on by the defendants to carry it into effect.

19th. That the statements made by John A. Campbell at this meeting, February, 1851, were intended to deceive your orator and unduly influence him into a submission which ought never to have been made, and which your orator's counsel, in the proper discharge of his duty, would never have advised.

20th. That the statements of John A. Campbell on this occasion as to the large advances and valuable services of the defendants in the case were untrue.

21st. That in this transaction, John A. Campbell, whose duty it was to advise your orator, and on whom your orator relied for protection, advised and acted for the defendants alone, and in opposition to the rights and interests of your orator.

22d. That the deed drawn by Campbell and re-drawn by Thompson, with the addition of the covenant for relinquishment of dower in February, 1851, though falsely reciting considerations, was without any consideration, and was obtained from your orator while the land was held adversely to both parties, and was in suit, through ignorance, mistake, and implicit confidence on the part of your orator, and by misrepresentations, concealments of the truth, collusion and undue influence on the part of the defendants and their attorneys, and is therefore null and void.

23d. That the deed of July 19th, 1851, was also obtained under similar circumstances, and by similar means, with the addition of threats and coercion. That the alleged agreement of Kennedy for alleys, was a mere matter of assertion, having no existence in fact, unsupported by any competent evidence, and whether susceptible of proof or not, wholly incapable of enforcement against your orator. All of which was known to the defendants and their attorneys, but not to your orator.

24th. That instead of the addition of alleys, the lot itself was sold by Kennedy for half its estimated value, and his deed, a copy of which is hereto annexed, marked Exhibit F, contains, as your orator believes, the only and entire contract he made with his vendees on the subject of said lot, all of which was well known to the defendants, but wholly unknown to your orator when he executed the deed of July 19th, 1851.

25th. That since 1851, various attempts have been made on the part of the defendants, by means of misrepresentations, undue influence and threats, to induce your orator to make to Thompson, Cleveland, and Campbell, a new deed, which should operate as a conveyance, or as a confirmation of that of February 15th, 1851, and thereby assure to them a title to two-thirds of all the estate recovered by your orator in said suit, and particularly to sign a paper prepared by their attorney, a copy of which is hereto annexed marked Exhibit H.

26th. That the bond, or covenant made by William F. Cleveland to Joshua Kennedy, which formed a part of the consideration of the settlement made between your orator and William R. Hallett, acting executor of Kennedy, was by collusion among the defendants, and without the knowledge or consent of your orator, delivered to said Cleveland, and is now withheld from your orator, and his right to it denied.

27th. That in all the interviews between your orator and the defendants, or any of them, touching your orator's affairs from the first to the last, there has been a studied and an agreed suppression of the truth so far as it was deemed necessary to mislead him, as well as constant and reiterated misrepresentations fraudulently intended to influence your orator to his own injury and to their benefit.

28th. That the defendants sometimes pretend that said agreements and deeds, though originally void, have by the acts of your orator since been made valid and confirmed, whereas your orator charges the contrary to be true. That whatever your orator has since done that might, unexplained, countenance such a pretence, was done in ignorance of his rights and of the facts of the case, and under the influence of the various unlawful practices of the defendants brought to bear upon him for the express purpose of obtaining such a confirmation. That the mode and form of settling and securing the fees of the attorneys were devised and prepared by the attorneys in the case, or one of them, and the building contracts and leases were also so prepared by the same, or some other attorneys for the defendants, and with the intent, as your orator now believes, of affording evidence of confirmation by him of the deed of February 15th, 1851, but they were executed by your orator in ignorance of the frauds that the defendants were attempting to practice upon him, and under the advice of counsel in whom he as yet had confidence.

29th. That all the moneys ever advanced necessarily in the prosecution of the suit, as your orator is informed and believes, were less than fifteen hundred dollars, and but little if any exceeding one thousand.

30th. That it has been sometimes pretended that Cleveland paid to John A. Campbell before the commencement of the suit one thousand dollars on your orator's account, whereas your orator charges the contrary to be true. That said money was paid by James Campbell, and not for your orator, but for the sole purpose of having a notice served on him that your orator claimed of him the back rents of the Campbell and Cleveland property, in order to enable said Campbell to resist a claim for the same back rents from the Branch Bank, and to get time and a settlement with said Bank on terms favorable to him, and which your orator is informed he was thereby enabled to do. Such a notice was wholly useless to your orator, and wholly unauthorized by him, as was also said pretended payment.

31st. That the defendants have, since the termination of said suit, received from your orator, and from the proceeds and rents of his estate so recovered as aforesaid, above the sum of twenty-five thousand dollars in cash; and are claiming and receiving two-thirds of the annual rent, and refuse to apply any part thereof to the payments of the debts for which the estate is mortgaged as above set forth, to which payment, said income as far as necessary was to be applied, and are misapplying said income and leaving said mortgage debts unpaid, and stimulating the mortgagee to proceed and foreclose his mortgage for the purpose of further oppressing your orator and compelling him to sacrifice his interests.

32d. That the annual rent of the estate is about fifteen thousand dollars. That the defendants are now renting, and have rented for the next year terminating on the first of November, 1856, two-thirds of said estate, and obtained notes or other securities for the same, and have appropriated the same to their own use, and refuse to apply any part of it towards the payment of said mortgage debts.

33d. That the value of the estate unsold according to the sales made in 1852 and 1853, is about two hundred and fifty thousand dollars, and that the defendants if sustained in their fraudulent scheme against your orator, will have obtained from him in cash and valuable real estate about the sum of two hundred thousand dollars, without any consideration whatever.

34th. That your orator is willing to allow the defendants to retain out of the moneys they have received a liberal compensation for any advances of money they may have made on his account, or for any services they may have rendered him in the case, and has requested them to come to an amicable settlement for the sake of avoiding a suit, and has made them the most liberal offers; but so it is, they wholly reject all overtures and insist on two-thirds of all said estate so recovered by your orator as aforesaid, and two-thirds of all the rents and profits thereof by virtue of their said fraudulent deeds and not otherwise; and upon the entire bond or covenant of Cleveland, which formed a part of the settlement between your orator and Hallett, as hereinbefore stated, and all the use and benefit thereof. All which is contrary to equity and good conscience and greatly injurious to your orator.

To the end thereof that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths (except Drury Thompson and William F. Cleveland, who are not required to answer on oath, their oaths being waived), and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged. And that they may discover and set forth the agreements which were entered into by them, or any of them in the years 1842 and 1844, or at any time previously in regard to your

orator's estate, and the prosecution of any suit or suits for the recovery thereof; also the agreement between the said parties or any of them for themselves and others with John A. Campbell, or with Campbell and Chandler, by which the latter were employed as attorneys to prosecute such suits. And that they may produce and deliver up to be cancelled, if necessary, as this Honorable Court may direct, the bond given by your orator to Thompson in Texas in January, 1844, the agreement given by your orator to him in January, 1847, and the deed given by your orator to Thompson, Cleveland and Campbell, bearing date the 15th of February, 1851, and hereinbefore referred to, and that said bond, agreement and deed, and each of them may be set aside, and declared null and void. And that the defendants may be required to account for all the moneys and securities received by them and each of them, either from your orator, or from the said estate recovered by your orator as aforesaid. And that the defendants and each of them, their agents, and attorneys, may be restrained from collecting any rent from said estate, or from any part of it; also from selling, conveying, or encumbering it, or any part of it; and that they be required to deliver possession thereof, so far as they have possession, to your orator. And that a receiver with the usual powers be appointed to receive and collect two-thirds of the rent and profits of all said estate now claimed by said defendants, and under the directions of this Court to apply a due proportion thereof to the payment of the mortgage debts now existing upon said estate now due, and as the same shall fall due, which debts are hereinbefore stated and referred to, and the residue to invest or hold, as this Court may direct, until its final order in the cause. And that your orator may have such further relief, or may have such other relief as the nature of his case may require, and shall be agreeable to equity.

May it please your Honors to grant unto your orator the writ of subpœna to be directed to said Drury Thompson, William F. Cleveland and James Campbell, commanding them, and each of them, to be and appear before your Honors in this Honorable Court, according to its rules and practice, and then and there to answer the premises, and further to stand to and abide such order or decree therein as shall be agreeable to equity and good conscience.

SIDNEY E. COLLINS.
K. B. SEWALL,
Att'y and of Counsel for Plaintiff.

Filed November 27th, 1855. GEO. E. HOLT, *Clerk.*

Exhibits to pl't'ff's bill of complaint. Filed Nov. 27th, 1855.
GEO. E. HOLT, *Clerk.*

EXHIBITS.

Exhibit, No. 1.

Bill of Complaint.

To the honorable the Judges of the Circuit Court of the United States for the Southern District of Alabama, Sidney Eugine Collins, a citizen of the State of Missouri, brings this his bill of complaint against William R. Hallett and Robert L. Walker, executors of the last will and testament of Joshua Kennedy, deceased, John H. Hastie and his wife Saluda, Augustus R. Meslier and his wife Mary, Clarissa Kennedy, Augusta Kennedy, and Joshua Kennedy, the said Saluda, Mary, Clarrissa, Augusta, and Joshua, being heirs at law of Joshua Kennedy, deceased, and the three last being under the age of twenty-one years, James Campbell, James Innerarity, Samuel Kitchen, William Kitchen, and the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, all of whom are citizens of the State of Alabama.

Your orator showeth, that he is the son and heir of Joseph Collins, deceased, who died in the county, south of the 31st degree of north latitude, between the Iberville and Perdido, about the year 1812. He left three children, whose names were George, Joseph, and Sidney Eugine, to whom he devised his real and personal property, a copy of which is herewith filed, with certificates of probate, as "Exhibit A." George died some years ago (1836 or 1838), and Joseph when a youth, both of them without having been married, and intestate. Your orator is the heir at law of his two brothers.

Your orator further showeth to your honor, that his father obtained from the Spanish government a grant for a parcel of land in the city of Mobile, a copy of which, taken from the archives in the custody of the clerk of the County Court for Mobile County, is hereto attached, marked "Exhibit No. 1." This grant conflicted with one of an older date, then held by William E. Kennedy, or in which William E. Kennedy had an interest, given to Alexander Baudain. To avoid the difficulty, an agreement was made between William E. Kennedy and the father of your orator, dated the 21st November, 1806, and which is fully set forth in the deed from the said William E. Kennedy to James Innerarity, a copy of which is hereto attached, marked "Exhibit No. 2."

Your orator states that he has not any of these originals, that he presumes they are in the possession of Hallett and Walker and James Innerarity, and he prays they may be produced on the hearing.

Your orator states that the lands referred to in the deed last mentioned, were improved and occupied for the objects and purposes declared in the articles of agreement, while the Spanish government held possession of this territory; and when the territory came to the possession of the United States, both grants were laid before the commissioners appointed to inquire of the titles.

The report of Mr. Crawford, commissioner, was not favorable to either. The claim of Collins was not revived, but that of Baudain was by William E. Kennedy; a favorable report was made of the evidence in July, 1820; and in May, 1822, it was confirmed by act of Congress; a certificate has issued in said claim, but no official survey has been made and returned, which has been adopted as the location, and no patent has ever issued. Your orator will produce on the hearing the official record of the transactions in the land office on this claim. It will be evident from that record, as well as from the deed to James Innerarity, that the proofs in the grant to the portion of your orator were withheld by the said Innerarity, *in rendession* of said deed.

Your orator further showeth to your honor, that the said Wm. E. Kennedy, who is now deceased, made a deed to the defendant, Samuel Kitchen, which bears date about one month earlier than the deed to the said James Innerarity. This deed was executed in the presence of Joshua Kennedy and Diego McBoy, Joshua Kennedy being also a witness to the deed of William E. Kennedy to James Innerarity. This deed, though made (according to its date) the 28th January, 1820, was not received in the office of the clerk for record till the 29th of March following. In a deposition of Samuel Kitchen, made in a suit lately pending in the Court of Chancery, at Mobile, between the heirs of William E. Kennedy against the executors and heirs of Joshua Kennedy aforesaid, the said Samuel Kitchen gave the following account of the deed: That the said deed was delivered to him, the said Samuel Kitchen, by Joshua Kennedy. That Joshua Kennedy paid William E. Kennedy the condition money for the said Kitchen. That he said Kitchen had no reason to suppose it antedated, and that he was fully aware the said William E. Kennedy had made a deed to James Innerarity, the validity of which he was willing to risk and test. Your orator states that he will produce the deposition duly certified at the hearing, so that the said Kitchen's statement may appear in his own words.

Your orator further showeth to your honor, that the said Samuel Kitchen was the father-in-law of Joshua Kennedy at the time, and resided in Baldwin County, some twenty-four miles from the court-house; is a plain man; and it is probable that Joshua Kennedy communicated to him nothing that did not suit his object, for the said Joshua was a man of surprising reach of mind—deliberate, secret, cautious, unscrupulous, persevering; who bent all his energies to the acquisition of lands and land claims, and who foresaw at that day the favorable location of the city of Mobile, and that said parcel of land must sooner or later make his fortune. The said Wm. E. Kennedy, about the date of these proceedings, had begun to give way under the consequences of his dissipated and irregular habits; he had been dependent upon his brother for advice, counsel, assistance, and yielded to him in this case against

the dictates of his better nature. Your orator charges that the deed of Samuel Kitchen was a contrivance of Joshua Kennedy to defeat and to defraud the claims of your orator and his brothers, all of whom were small children at the time, and ignorant and unconscious of these transactions.

Your orator states that no deed from Samuel Kitchen to Joshua Kennedy is to be found upon the records of the county. That the same is secret, though your orator is aware that the property in dispute is in the hands of the executors and heirs of Joshua Kennedy, conveyed by testamentary papers in 1838, a short time before his death. Your orator proposes now to show to your honor the contrivances resorted to by the said Joshua to overcome the force of the articles of agreement aforesaid, and the solemn acknowledgment of confirmation of them by the said William E. Kennedy in 1820. Some time in the year 1824, Joshua Kennedy procured a deed, absolute in its terms, upon the consideration of $10,200, from Wm. E. Kennedy for all his interest in these considerable tracts of land in the city of Mobile, known as the Price, McBoy, and Alex. Baudain claims; the last being the claim hereinbefore mentioned. Your orator states that said Joshua Kennedy immediately revived the Price claim specified in the said deed upon which unfavorable reports had been made by the commissioner before that time, and succeeded in effecting its confirmation by act of Congress in 1829. That he procured its location in 1829 or 1830, so as to cover the land embraced in the Baudain claim, which had been previously confirmed, and which is saved in the act of Congress, and by the patent issued to Price, patentee, it having been previously confirmed. The said claim, however, had never been located and officially surveyed; and although it is the older and better title, although the confirmation is more definite and complete, yet the said Joshua preferred to sink the entire claim derived through Alexander Baudain, and to appear as the proprietor of the lands as the representative of Thomas Price.

Your orator states, that on the map of the survey of the Price claim made by the Spanish government, the grant to Baudain and to the father of your orator aforesaid appears. That the deed from Price to Wm. E. Kennedy, under which the said Joshua Kennedy claims, bears date one day after the articles of agreement aforesaid, and the agreement for the transfer was evidently before, and the said Kennedy continually recognized the claim of your orator's father up to 1820, after the acquisition of the Price title.

Your orator charges that the employment of the Price claim in the manner aforesaid, is one of the evidences of the anxious fear of the said Joshua of your orator's rights, of which the antedated deed of Kitchen was another expression.

Your orator further showeth to your honors, that the Spanish grant to Price, bearing date in 1806, has at all times rested under strong suspicion. It was made for an unusual quantity of land, and

its call for the granted lots of the town was strange and unusual, leading to uncertainty and fraud. It embraced nearly the whole city of Mobile as it existed at the date of the grant, and encroached on the lands set apart for public purposes (for property). The considerations on which it purports to have been based, your orator believes, and therefore charges to have been entirely unfounded. Your orator further states, that the claim was received before the commissioners at St. Stephens, after Joshua Kennedy had been at Havana, in 1825 or 6, and new documents were then exhibited to the commissioners for the examination of land titles, and that the frame of the was altered after that time. Your orator states, that it was never supposed that this claim interfered with the Baudain claim, and that W. E. Kennedy was solely interested in both during the whole period of the Spanish supremacy, and until his conveyance in 1824 to Joshua Kennedy.

Your orator further shows to your honors, that in the year 1832 there appeared on the docket of the Circuit Court of Mobile County, a cause between William Kitchen and James Innerarity. There is no order found in the minutes of the Court, nor any entry concerning it, save the final decree. There is no bill, answer, or exhibit—nothing that affords any key to the claim of the said William Kitchen against the said Innerarity. There is simply a decree directing the said Innerarity to convey the said land to the said Kitchen, on the payment of a claim set forth in his answer; and the deed hereto attached, marked "Exhibit No. 3," is that deed taken from the records.

Your orator charges that the conveyance was made under some agreement between Joshua Kennedy and the said Innerarity, and that the name of Kitchen was merely employed to effectuate the matter, though prior to this the Price claim had been located and surveyed, and the location and survey covered this parcel of land.

Your orator further shows to your honor, that as well as he can ascertain, and as he fully believes, he was born in the year 1810. His brother George was older than himself. Your orator had never resided in Alabama till the year 1827, and at that time he became an apprentice to a carpenter to learn the trade. His elder brother was employed, or apprenticed in a printing office, as a journeyman. In the year 1829, George made a deed to William Kitchen hereto attached, and in 1830 your orator executed the deed to the same individual hereto attached, both copies taken from the records of the county clerk of Mobile County. Your orator states, that William Kitchen was the brother-in-law of the said Joshua Kennedy, and the son of Samuel Kitchen. That at this time he had no conveyance from his father, Samuel Kitchen, it being the policy of the said Joshua Kennedy to keep these transactions separate. That the said William Kitchen, at the date of these conveyances, was a very young man, living with said Joshua, and, as your orator believes, was acting for him.

Your orator states, that the said Joshua made representations to your orator and his brother that their claim was of no value. That but for the respect he had for his father, he would not give a cent for it. That all he would pay would be the costs and expenses of a suit, and various other depreciating remarks and doubtful representations, which, coming from a man of vast experience in titles of real estate, of enormous wealth, of influence which attaches to wealth, no matter how accumulated, could not but make a deep impression upon the minds of your orator and his brother, and, indeed, the execution of said deed. This would be aggravated by the condition of complexity and embarrassment into which the devices of the said Joshua had involved the title. The claim of your orator's father had abandoned, and there was no mode of reviving it, except by petition to Congress. The claim of Alexander Baudain, though it had been confirmed, yet the evidences of it were only to be found at a distance, and that claim the said Joshua had depreciated and displaced; and the records of the county disclose that an older conveyance from Wm. E. Kennedy to Samuel Kitchen, clothed with all the forms of law, had been made, and James Innerarity, the administrator of the said Joseph Collins, held evidence of right, and set up claims of his own. The facts that have since been developed, that Joshua Kennedy was the promoter and mover of all these complex and fraudulent arrangements had not appeared. A vague suspicion could at most arise—it wanted the facts that William Kitchen should make his conveyances to Joshua for the amount of the purchase money paid to Innerarity. The fact of the transfer by Samuel Kitchen for the nominal consideration to said William, or said Joshua; the fact of the overlaying of the Baudain by the Price claim, and the disclosures made by Samuel Kitchen in his deposition in 1840, fully to elucidate the complicated and checkered web of fraud so curiously, systematically, and perseveringly woven by the said Joshua.

Your orator further showeth to your Honor, that shortly after these transactions your orator left the State of Alabama with his brother; that they have neither resided in Alabama since their departure, and that the facts aforesaid have not therefore come to their knowledge. That the absolute deed received in 1824 by the said Joshua Kennedy from Wm. E. Kennedy, passed in his life for an unconditional deed, and was so claimed by him on his death-bed. That it has been established by the decree of the Court of Chancery that it was given upon a trust to preserve the property therein mentioned for the children of William E. Kennedy. That the investigation in the said case led to the inquiries into the life and conduct of the said Joshua, and among other things, facts were exposed in regard to this property, which afford a clue to the whole labyrinth in which the said Joshua has so artfully involved the title to it. Your orator charges that the control of this property has been for the said Joshua Kennedy, and that the employment of the

said William Kitchen and Samuel Kitchen, has been to perplex and confuse the truth. That in the execution of the deeds to William Kitchen, both the said George Collins and Sidney Collins were imposed upon by the declarations, assurances, and representations of the said Joshua, in regard to the title and the value of their rights, rights which had only been impaired in value by the contrivances of the said Joshua himself. Your orator states that he is informed by his mother, that neither the said George nor himself were of age at the date of their respective deeds, and though no record of his age is within his reach, he believes this to be true.

Your orator further states that the said Joshua in his life received very large profits from this land, and that Hallett and Walker, and the heirs of the said Joshua have done so since; that they claim, and the heirs of W. E. Kennedy conceded their exclusive right to the said land in the division between them, and that the latter have none in said property. That all the acts of the said parties are and ought to be visited on the said James Campbell and the President and Directors aforesaid, for they have aided and abetted them, taking conveyances from them, and controlling the property under them; and should it appear that the said Samuel Kitchen and William Kitchen, and James Innerarity, have acted in good faith, and without any relation to Joshua Kennedy; nevertheless the said Joshua should not be allowed to carry off the prize. For your orator charges that the said property was worth twenty thousand dollars and upwards in 1820, seventy-five thousand dollars in 1830, and is probably worth two hundred thousand dollars at this time. The result would be that for nominal sums advanced by Joshua Kennedy, he would realize this value by slow, consistant, and laborious prosecution of a scheme of fraud, all of which would end to the wrong of your orator, and be contrary to equity and good conscience.

In consideration of which, your orator prays that writs of subpœna may issue to William R. Hallett and Robert A. Walker, John H. Hastie and wife, Augustus R. Meslier and wife, Clarissa Kennedy, Augusta Kennedy and Joshua Kennedy, James Innerarity, Samuel Kitchen, William Kitchen, the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, citizens of the State of Alabama.

1. That they may answer this bill and discover in their answers the original documents herein referred to, and especially that they may set forth whether they, or either of them, have the original articles of agreement between William E. Kennedy of the 21st November, 1806, referred to in said deed to James Innerarity, and when and where they last saw it, and whether this is a true copy.

2. That they may set forth the original deed from William E. Kennedy to James Innerarity hereto attached.

3. That they may set forth the deed from William E. Kennedy

to Samuel Kitchen, and all the facts connected with its execution, and by whom it was written.

4th. That they may set forth the deeds from James Innerarity, George Collins, and Sidney Collins to William Kitchen. State by whom they were written, and who advanced the consideration, and to whom paid.

5. That they may discover the conveyances to Joshua Kennedy, and what sums of money was paid by him for them.

6. That they may set forth any papers connected with the Price and Baudain claims, and whether the latter is not included in the former, and that the original papers may be produced to Baudain, and from Baudain to William E. Kennedy; and also that the papers under which the Price claim may be held be produced.

Your orator prays that the said defendants be decreed to reconvey to your orator the said parcel of land, and account for the rents and profits to your orator, and that they may surrender the possession so that your orator may acquire all he has lost, and that such other and further relief be granted as is consistent with equity and good conscience.

CAMPBELL & CHANDLER, *for Pl'ff.*

Endorsed, Filed 27th April, 1844. D. FILES, *Clerk.*

Exhibit No. 2.

Decree.

SIDNEY E. COLLINS
vs.
THE HEIRS AND EXECUTORS OF JOSHUA KENNEDY.

CIRCUIT COURT OF THE U. STATES.

Southern District of Alabama.

13th April, 1847.

This cause this day came on to be heard, and it is ordered, adjudged and decreed, that the deeds of Sidney E. Collins and his brother George Collins to William Kitchen, be set aside, and that the representatives of Joshua Kennedy account for the rents and profits received from the said south half of the said lot of land, and also the money derived from the sale of any portion thereof, together with the interest thereon, and that the said representative be allowed for all permanent improvements made on the said lands, also the money paid to Sidney E. and George Collins with interest, and that it be referred to the master to take an account between the parties, in conformity to the principles of this decree.

Exhibit 3.

Deed.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that we, Wm. R. Hallett and

Robert L. Walker, appointed by the will of Joshua Kennedy, deceased, his executors, and John H. Hastie and his wife Sichiza, Augustus R. Meslier and Mary his wife, John G. Akin and Clarissa his wife, Augusta and Joshua Kennedy, the said Seclusa, Mary, Clarissa, Augusta and Joshua, all of the county of Mobile, and Baldwin, under and in obedience of the decretal orders of the Circuit Court of the United States for the Southern District of Alabama, in the suit of Sidney E. Collins against us, and to fulfil the requisitions of that decree, also for the purposes of adjusting with the said Collins all his claims and pretensions under it, and to obtain an acquittance therefrom, and in consideration of five dollars to us paid by the said Collins, the receipt whereof we hereby acknowledge, we do hereby release, remise, and convey, and have released, remised and conveyed to the said Sidney E. Collins, all the right, with claim, interest and demand, which we or either of us have in and to the parcel of land in Mobile, bounded north by St. Anthony Street, east by the channel of Mobile River, south by St. Louis Street, and west by Royal Street, with all the privileges thereto, also that parcel of land in Mobile bounded north by State Street, south by St. Anthony Street, west by Royal Street, and east by lands now or lately held by the heirs of Wm. E. Kennedy, and occupied by Daniel E. Hall and Jesse Carter, which lot of land measures on State Street 115 feet, and on St. Anthony Street 115 feet, with the appurtenances belonging thereto. To have and to hold the same to the said Sidney E. Collins and his heirs forever. And Sidney E. Collins, now of the county of Mobile, hereby releases and quit claims to the parties aforesaid, all right, claim and demand in and to all the sergent matter of the decree in the case aforesaid (except the cost of suit), and hereby accepts this deed in full satisfaction of the same. In testimony whereof, the said several parties have hereunto set their hands and seals this 8th day of July, 1851.

WM. R. HALLETT, [SEAL.]
Executor of the Estate of Joshua Kennedy, deceased.

SICLUSA K. HASTIE, [SEAL.]
J. H. HASTIE, [SEAL.]
JOHN G. AIKIN, [SEAL.]
JOSHUA KENNEDY, [SEAL.]
A. R. MESLIER, [SEAL.]
MARY C. MESLIER, [SEAL.]
AUGUSTA KENNEDY, [SEAL.]
By WM. R. HALLETT,
Guardian ad litem by order of the Court.

Witness to signature of Wm. R. Hallet.
WM. MCMAHON.

Witness of the signatures of J. H. Hastie, John G. Aikin, and Clara R. Aikin. GERALD BYRNE.

STATE OF ALABAMA,
Baldwin County.

Before me, William Booth, a Justice of the Peace duly commissioned and acting in and for the County and State aforesaid, personally appeared J. H. Hastie, his wife Siclusa K. Hastie, John G. Aikin and his wife Clara A. Aikin, known to me as the parties named in the foregoing deed, and severally acknowledged that they did sign, seal, and fully execute the said deed for all the purposes therein expressed. Witness my hand and seal, this the 8th day of July, A. D. 1851. WM. BOOTH, [SEAL.]
Justice P. B. C.

THE STATE OF ALABAMA,
Baldwin County.

Before me, William Booth, a Justice of the Peace for the County of Baldwin aforesaid, came Siclusa K. Hastie and Clara A. Aikin, parties to the foregoing deed, who respectively being examined by me privately and apart from their husbands, did severally acknowledge that they signed, sealed and delivered the said deed freely and without fear, threats or compulsion from their said husbands. In witness my hand and seal, this 8th day of July, A. D. 1851.
WM. BOOTH, [SEAL.] *J. P. B. C.*

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that on the twenty-first day of July, 1851, before me, Sidney T. Douglas, a Justice of the Peace in and for said County and State, personally appeared Augustus R. Meslier, Mary E. Meslier his wife, and also Joshua Kennedy, whose names are subscribed to the within deed, and severally acknowledged that they signed, sealed and delivered the said to Sidney E. Collins on the day and year, and for the uses and purposes therein mentioned; and the said Mary E. Meslier, the wife of said Augustus R. Meslier, on a private examination of her made by me separate and apart from her husband, further acknowledged that she signed, sealed and delivered the within deed to Sidney E. Collins freely and of her own accord, and without any threats, fear, or compulsion on the part of her husband.

Given under my hand and seal at Mobile, July the twenty-first, A. D. 1851. SIDNEY T. DOUGLAS,
Justice of the Peace in and for Mobile County.

THE STATE OF ALABAMA,
Mobile County.

Personally before me, Charles W. Rapier, a Notary Public in and for said county, duly commissioned and qualified, the within named W. R. Hallett, who acknowledged that he signed, sealed and delivered the within deed on the day and year, and for the uses

and purposes therein mentioned, to the within named Sidney E. Collins.

Given under my hand and seal notarial, this 10th day of September, A. D. 1851. [L. S.] CHARLES W. RAPIER,
Notary Public, M. C.

THE STATE OF ALABAMA,
Baldwin County.

I, Patrick Byrne, Judge of Probate in and for said County of Baldwin and State aforesaid, do hereby certify that William Booth, whose name is subscribed to the within certificates, dated each the eighth day of July, A. D. 1851, was an acting Justice of the Peace in and for said County of Baldwin and State aforesaid at the time, and that due faith may be given to his acts as such.

Given under my hand and seal official, this 31st day of March, A.D. 1852, at office in said county.

[L. S.] PATRICK BYRNE, *Judge P.*

Exhibit No. 4.

Decretal Order.

CIRCUIT COURT OF THE UNITED STATES,
for the Southern District of Alabama.
Dec'r Term, 1851.

SIDNEY E. COLLINS
vs.
HALLETT & WALKER, EXECUTORS, &c., *et al.*

In Chancery.

This day came the plaintiff, and the master's report being read, the same is confirmed, and thereupon the Court decrees the entire estate described in the said deed be vested in the plaintiff, and that the said William R. Hallett, guardian ad litem, be authorized to subscribe the name of Augusta Kennedy thereto, and that the whole interest of the said Augusta be vested in the plaintiff as well by this decree as by the said deed.

(Signed) JOHN GAYLE, *Judge.*

A true copy from the minutes of said Court.

Attest, JOHN FITTS, *Clerk.*

Exhibit A.

Triplicate Deed.

THE STATE OF ALABAMA,
Mobile County.

Whereas I, Sidney E. Collins, of the County of Liberty, State of Texas, have commenced a suit in the Circuit Court of the United States for the Southern of Alabama, against the heirs and representatives of Joshua Kennedy, dec'd, for the lands known as the south half of the Alexander Baudain tract, bounded by the

Mobile River, St. Louis Street, Royal Street, and a line equally dividing the Alexander Baudain tract, and have obtained a recovery therefor in the said Court, and which judgment has been affirmed in the Supreme Court of the United States, and whereas William F. Cleveland, James Campbell, and Drury Thompson, have heretofore advanced me moneys, and have rendered me aid and assistance in the premises whereby great benefits have accrued to me, and in consideration of five dollars to me in hand paid by the said parties, the receipt of which I have acknowledged, I do hereby convey to the said parties the undivided two-third parts of all the land embraced in the said recovery, and all the estate, right, title, claim and interest therein that I have, hold, possess and enjoy, or that I may hereafter have, hold, possess and enjoy in the said lands, also the undivided two-third part of all the recovery I may make or obtain for rents and profits, sales of land, or derive in any manner from the accounts to be taken in said suit.

And it is hereby fully understood that the said parties shall be fully interested in the two-third part of said judgment, but on this condition, that they shall absolutely assume the two-third parts of all the fees and expenses of said suit, and the cost and charges that have heretofore been made, and should the defendants occasion further litigation, that the said parties shall pay two-thirds the future expenses.

In witness whereof I, the said Sidney E. Collins, have hereto set my hand and seal this the fifteenth day of February, in the year of our Lord one thousand and fifty-one. It being further understood that I, the said Sidney E. Collins, do further covenant and agree for the considerations aforesaid, and bind and obligate myself to obtain the relinquishment of dower of my wife Louisa R. Collins to the land and premises hereby conveyed to the said Drury Thompson, James Campbell and William F. Cleveland, their heirs and assigns forever, as witness my hand and seal on the day and year above mentioned. Executed in triplicate.

SIDNEY E. COLLINS, [L. S.]

Drury Thompson, James Campbell and William F. Cleveland, jointly and severally agree with the said Sidney E. Collins, to accept this agreement and conveyance on the terms stated therein, and hereby pledge to him and to one another their said interests for the fulfilments of the contract therein made for payment of the expenses, charges and costs of suit.

Witness our hands and seals, 15th day of February, 1851. Executed in triplicate.

DRURY THOMPSON, [L. S.]
W. F. CLEVELAND, [L. S.]
JAMES CAMPBELL, [L. S.]

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that Sidney E. Collins, Drury Thompson

William F. Cleveland and James Campbell, appeared personally before me, William Brooks, a Notary Public for the County and State aforesaid, duly commissioned and qualified, and severally acknowledged that they signed, sealed and delivered the foregoing instrument or agreement of writing on the day and year, and for the uses and purposes therein mentioned.

Given under my hand and seal of office, this the fifteenth day of February, A. D. 1851. [L. S.] WILLIAM BROOKS,
Notary Public.

THE STATE OF ALABAMA,
Mobile County.

I, Alexander B. Meek, Judge of the Court of Probate in and for said County and State, do hereby certify that the foregoing is a true and correct copy or transcript taken from the records as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and seal of said Court of Probate, this the third day of February, A. D. 1855.
[L. S.] A. B. MEEK, *Judge.*

Exhibit B.

Letter.

Dear Sir: When you left here you will remember that I was much opposed to your going, feeling as I did, "that all was not gold that glitters," and having an indistinct presentiment that something would turn up that would require your presence. You left under settled conviction that our matter was fully adjusted, that we should receive all the lands east of Royal, south of St. Anthony, north of St. Louis Streets, and the ten thousand dollars in lieu of reclamations for sales, rents, &c.; after you left, however, it appeared that this was not a fixed fact. Campbell handed me a memorandum in the State Circuit Court, where I was then awaiting every moment the call of a case—"division of property; accounts to be balanced; 10,000 to be paid in property or cash." A few moments after he left me, I saw that it was in the handwriting of Hallett, and the first question in my mind was how much would "division" give, and by what data could we divide, as we could have no agency in fixing the north line between the Kennedy's and the Orange Grove. I hastened off to Primrose, and told him to go and telegraph you to come back, and in the meantime go and hunt up Mr. C. and know what division meant. He did not send you a dispatch because he said you had left, and as he thought it best to see Mr. Campbell and ascertain the particulars. We saw him, and he drew up a decree to be entered by consent of parties for the south half of the claim to be bounded so. by St. Louis, and north by Orange Grove line, and the $10,000. This was objected to on the ground that it would cut off too large a strip on St. Anthony Street. His explanation of the matter to me by the maps and printed records

of the case, seemed plausible and reasonable, and he and myself went on the ground and stepped off the division, which all looked very well, but the chain of the thing was broken by the interference on the blocks in any way. I rose early next morning and went after Cleveland to show me the true point where the Orange Grove line will cross Water Street, then measured south the whole of the distance from that line to St. Louis Street, and found we should have about 24 f't cut off of the north, leaving us no front on St. Anthony Street from a short distance above Water Street to the river. We consulted together and determined that we would not agree to this, and I drew up a note which was approved by us all, and I went down to him, and after listening to him and finding that he was impressed with justice and correctness of his proposition, I handed him the note referred to, a copy of which is as follows:—

"MOBILE, April 26, 1851.

DEAR SIR: Mr. Collins' instructions, when he left the city, were to make no compromise for less than the proposition recommended by you and acceded to by him with great reluctance, to wit: to receive all the lands between St. Anthony street, St. Louis street, Royal street, and the channel of the river Mobile, as his half of the Baudain tract, and in lieu of the 100 feet square sold Campbell and Cleveland; to receive $10,000 in money, or property at city assessor's valuation of the present year; and accounts between the parties to be considered balanced. The defendants paying all costs. In his absence nothing less can be received, consequently I desire that you will have the writ of possession issued in accordance with the decree for the south half of the Baudain tract, and such other orders and proceedings as are requisite to go on with the accounts between the parties. Mr. Collins will return on the first of June next, and we can then determine what is best to be done.

Respectfully, D. THOMPSON,
Att'y for S. E. Collins."

This paper he slammed down and said we might go to *the* hell and get some other attorney to attend to the case and carry out our wishes and views; that he would wipe his hands of the matter; that he never wanted me or either of us to speak to him again in the matter; that he would have no more to do with it; that he would strike off five thousand of his fee, and think himself well paid for that sum in getting rid of the case. I told him that I did not desire to offend him; that you were not here, and that if you were I should feel better satisfied in acting, as I could consult with you personally; but your views, wishes, and instructions were explicit; that I wanted no other attorney but him, as no other could do us the justice we required; that he would certainly go on and get us the writ of possession for the south half of the claim, be it more or less, and let us contend for the boundary. His reply to this was, "How in the hell do you expect I can get the writ of

possession? You talk as though I had nothing to do but go and tell the judge or clerk to issue it, and it would be issued." I left him and have not mentioned the case to him since. He came to me the next morning in the armory and said he had had that decree entered; that the strip north of St. Anthony street on Royal street he would take himself; that he would pay the difference between that and the front on St. Anthony st. which we wanted; that we would then owe him the balance and he wanted it paid. To this I replied, You have? I did not want you to do it. He says, I have done it, and left me. I went soon after to the court-room and found the decree was entered, a copy or substance of which I will enclose. I have not said one word to him on the subject since. Prim has seen him; Cleveland has seen him. They have had Waring to see him; but I object to paying anything more to him. It is now ascertained that we cannot get the front on St. Anthony street, unless we buy it of the heirs; so says Prim and Cleveland. I went to his office this afternoon determined to have one more conversation before I wrote and ascertain clearly every point. He was not in, and I cannot say that I was sorry. I shall not accept the decree or do anything that will recognize it until I see you or hear from you, unless I can see better than I now see. I want you to come over immediately. If you desire it, bring your wife and children with you, and let it be understood at your home that you are going on a visit; do nothing to change your residence.

This Orange Grove boundary can only be managed in the United States courts. I am for setting this decree aside, as being done without consent and in violation of express instructions to the contrary. Come over and let us go at it and get ready for taking the account. We are all agreed that this decree will not do, and that we will not submit to it. Primrose and Waring are off to-day for New Orleans, for what God knows; but they said they would be back Monday. I am suspicious, you will say; but suspicion in some instances does but little harm, and may prevent much. If they should stumble upon you make no trades; come on the ground and let us fight it out. At any rate I prefer you to be here on the spot. I believe Mr. Campbell has been deceived by Delage's dam'd maps, or in some way. You know I believe strong in him in every way, and I cannot understand why he has done this; and if he was determined not to go on why not go into Court and continue the motions? we should have been better satisfied. Don't show this to any one. Don't speak of its contents to any one—not your best friend. I could not speak out as full if it was to be seen by any one but yourself; besides, Mr. Campbell may see further than we do, and may be doing all for the best, and all that mortal man could do; and until we shall be fully satisfied otherwise, we should not express dissatisfaction to him. In haste, your friend,

THOMPSON.

Exhibit C.
Letter.

MOBILE, 16th July, 1851.

GENTLEMEN: For some weeks past negotiations have been going on not much to my satisfaction, I confess, relative to my settlement with you. It is not my wish to recall to your mind any service I have rendered you, when on some facts it is proper you should consider that when I undertook the case of Mr. Collins the property was not estimated as worth more than $100,000, and from that as the extreme to $125,000. I allowed Thompson to make his terms as to fees. I have never deviated or expressed dissatisfaction with them.

Last year I could have made my own terms with you, for I knew that Mr. Sergeant could not efficiently manage the case; his health, he had written me, had been and was feeble. I preferred to go on with simply a claim for expenses, that his contract might be fulfilled. If I had not gone the case would have been endangered. I mention these things to show you that I have dealt in no exacting spirit with you. After the case had been decided here, and the bank property by the decree had been discharged from Collins' claim, Messrs. Campbell and Cleveland advised both Mr. Waring and myself of Kennedy's agreement in regard to the alley through the block formed by Water, St. Anthony, Commerce, and St. Louis streets. They repeatedly stated what proof they would make on the subject, and both stimulated us to suits for it, offering to give the evidence. I have no doubt as to what was said, nor of the legal effect of the transaction. On their statements, made by each of them, the recovery could be made of you, as it could have been of Kennedy, for you stand in no better condition than Kennedy. I refused to bring a suit, in my intercourse with Waring, because I assured him my clients, if they recovered, would settle the matter at the request.

During the winter I have noticed you have viewed one another with suspicion and distrust. I have not dealt so to you. I have awaited the final settlement of your suits to put the matter to you as honest men and gentlemen.

To say that you have not answered my expectations on several matters is simply to state the fact. I have been greatly disappointed. This, however, is needless to discuss. Primrose intimated to me that you might litigate my fee, and might litigate my rights to the alleys. I am determined to have no more talk with him or with you on this subject. My fee is $20,000, with interest from the date of the decree, but to put all things right say the 1st of June. My claims for the alleys is 45 feet from Water to Commerce streets, 20 feet from St. Louis to St. Anthony streets, running past my block. I will settle my part of the fee, say $10,000, by giving you ten years, you to pay me interest annually, notes to be given

for it with a mortgage on the block between Royal, St. Anthony, Water, and St. Louis, and to give me alleys extending from Water to Commerce street 30 feet for 120 feet, and twenty-five feet on the Commerce street line from St. Louis to St. Anthony. This proposition to be considered as one offer, and to be accepted as a whole. If this proposition is not accepted, I will settle my fee one half the first of June next, and the other half with interest June, 1853. The whole interest to be paid annually. This will leave the controversy of the alleys as they are. I think it proper to state to you in this last case, I will litigate it with you in every way, direct or indirect, that I can, for I shall feel that your conduct is proved in the spirit of injustice and personal wrong. I have put these propositions before you that I may have an answer from all, and that the subterfuges—that is, this one or that one, cannot be resorted to, afford an answer.

In reference to Mr. Chandler's portion of the fee, you can settle with him as you may agree with him. With due respect,

JOHN A. CAMPBELL.

MESSRS. SIDNEY E. COLLINS,
DRURY THOMPSON,
WM. W. PRIMROSE,
JAMES CAMPBELL,
WM. F. CLEVELAND.

Exhibit D.

Deed.

THE STATE OF ALABAMA,
Mobile County.

Whereas, in the sale of Joshua Kennedy to James Campbell and William F. Cleveland, of a block of land situate at the corner of St. Louis and Water streets, bound west by Water street, south by St. Louis street, and measures one hundred feet square, it was agreed that certain alleys were to be established; and whereas, the present occupants and owners of said land, John A. Campbell, Joseph Weswall, and Moses Waring, claim the benefit of said contract for a settlement of that claim, and with the view of adjusting the matter fully between them and us, and in consideration of five dollars to us paid by said Campbell, Weswall, and Waring, and in extinguishment of all their claim for alleys under said contract, and as a final settlement, we agree and hereby convey for that purpose for an alley way the land commencing on Water street one hundred and twenty feet from the northeast corner of St. Louis and Water streets, and running south from thence along the line of Water street to the line of the lot so conveyed by Joshua Kennedy and now held by said parties, and from that line to extend across the block made by Water, St. Louis, St. Anthony, and Commerce streets parallel to St. Louis street, with the width described afore-

said on Water street, which said parcel of land shall remain as an alley way free and open for the use and benefit of said property, and not to be closed without the consent of the said parties, their heirs and assigns; and upon the same conditions we agree that an alley way shall be run from north to south across the same block parallel to Commerce street, commencing on St. Louis street one hundred feet from the northwest corner of Commerce and St. Louis streets, and running from thence to the line of the lot above described, and extending with the same width to St. Anthony street, which said alley way shall be kept open for the use and benefit of said property, and not to be obstructed or closed, except by the consent of said parties, their heirs and assigns. Witness our hands and seals, this 19th day of July, 1851. "Commerce street interlined."

SIDNEY E. COLLINS, [SEAL.]
W. F. CLEVELAND, [SEAL.]
JAMES CAMPBELL. [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that on this 19th day of July, A. D. 1851, before me, George Conway, a Notary Public in and for Mobile County, State aforesaid, personally appeared the within named Sidney E. Collins, W. F. Cleveland and James Campbell, and acknowledged each that they signed, sealed and delivered the within instrument of writing on the day and year, and for the uses and purposes there mentioned. In testimony whereof I have hereunto set my hand and affixed my seal official, this the day and year above written. [L. S.] GEORGE CONWAY,
Notary Public.

Exhibit E.
Power of Attorney.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that I, Sidney E. Collins, of the County of Liberty, and State of Texas, do nominate, constitute and appoint James Campbell and William F. Cleveland, of the city of Mobile, my true and lawful attorneys in fact, for me and in my name, place and stead, during my absence from Mobile, to bargain, sell, alien, remise, release, and make good and sufficient deeds in law in my name, to pass an indefeasible estate to all and singular those two certain pieces and parcels of land in the city of Mobile, the one piece situated on the north side of St. Anthony Street, having a front on Royal Street of about three hundred and two feet more or less, and bounded north by State Street, east by the cotton warehouse of Hall & Carter, west by the said Royal Street, and south by St. Anthony Street, said lot having a depth on St. Anthony

and State Streets of one hundred and fifteen feet more or less, and the same distance on the east from St. Anthony Street to State Street as it has on Royal Street (to wit), three hundred and two feet more or less, being the same land conveyed by the heirs and executors of Joshua Kennedy to Sidney E. Collins, north of St. Anthony Street in the said city of Mobile. Also all that lot and parcel of land situated on Water Street in the city of Mobile, bounded north by St. Anthony Street, east by an alley of twenty feet, to be left open by said Sidney E. Collins from St. Louis Street to St. Anthony Street, said lot having a depth from Water St. to the alley of one hundred feet and no more, and one hundred and twenty feet on Water Street more or less, to an alley to be left open by the said Sidney E. Collins on the south side, lot to be bounded north by St. Anthony Street, south by the said alley, west by Water Street, and east by said alley of twenty feet, on the east it being that vacant lot of land on Water Street north of the building and improvements of Moses Waring, John A. Campbell and Joseph Wiswall, except the said alley to be left open which divides it from the last named gentlemen's property.

It is expressly understood that my aforesaid atty's in fact, are to sell the said lands, premises for cash, or such paper as they may think advisable and proper, and are to sell for such price or prices as they may think reasonable, and they are also authorized to collect all rents and amounts due me from all and every person or persons that are or may be owing me, or otherwise indebted, growing out of my recovery of any and all property recovered from the heirs and executors of Joshua Kennedy, and to make all contracts for leasing the property or any part thereof, and for building and improving the wharves thereon, and to sign my name to any note or contract that may be necessary and proper, improving the said property, or any part thereof. Hereby ratifying and confirming all that my said attorneys may lawfully do in the premises.

As witness my hand and seal this 16 day of July, A. D. 1851.

Signed, SIDNEY E. COLLINS, [L. S.]

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that Sidney E. Collins appeared personally before me, William Brooks, a justice of the peace for said County and State, duly commissioned and qualified, and acknowledged that he signed, sealed and delivered the within power of attorney to William F. Cleveland on the day and year, and for the uses and purposes therein mentioned.

Given under my hand and seal this sixteenth day of July, 1851.

Signed, WILLIAM BROOK, [SEAL.]
Justice Peace, M. C.

Exhibit F.
Deed.

This indenture, made the thirty first day of January, in the year of our Lord one thousand eight hundred and thirty-five, between Joshua Kennedy, of the city of Mobile, State of Alabama, of the first part, and James Campbell and William F. Cleveland of the same place, of the second part. Witnesseth, that the said party of the first part for and in consideration of the sum of ten thousand dollars lawful money of the United States of America, to him in hand paid by the said parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the second part, their heirs, executors and administrators forever released and discharged from the same, by these presents has granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, enfeoff, convey and confirm unto the said parties of the second part, their heirs and assigns forever, all that certain lot of land in said city, commencing at the northeast angle or intersection of St. Louis and Water Streets, thence running north eleven degrees west along the east side of Water Street one hundred feet to a point, thence extending eastwardly and parallel with St. Louis Street, and with said width of one hundred feet the distance of one hundred feet, together with all and singular the tenements, hereditaments, rights, members, privileges and appurtenances unto the above mentioned and described premises, with the appurtenances unto the said parties of the second part, their heirs and assigns, to the sole and only proper use, benefit and behoof of the said parties of the second part, their heirs and assigns forever.

And the said Joshua Kennedy for himself and for his heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the hereditaments and appurtenances unto the said parties of the second part, their heirs and assigns, against the said party of the first part and his heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

And Susan Kennedy, wife of the said Joshua, in consideration of ten cents to her paid, the receipt whereof she doth hereby acknowledge, doth hereby release and relinquish to the said Campbell and Cleveland, and to their heirs and assigns, all her right and title of dower in and to the above mentioned premises. In witness whereof, I have the parties to these presents, have hereunto set their hands and seals the day and year first above written.

JOSHUA KENNEDY, [SEAL.]
SUSAN KENNEDY, [SEAL.]

Sealed and delivered in presence of
JOHN C. KNIGHT, H. LEWIS.
Rece'd in office for record March 10th, 1835.

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that the above named Joshua Kennedy appeared personally before me, Henry Lewis, and acknowledged that he signed, sealed and delivered the foregoing deed on the day and year therein mentioned to the aforesaid William F. Cleveland and James Campbell. Also appeared personally before me, Susan Kennedy, wife of the said Joshua, who being examined privately and apart from her said husband, acknowledged that she signed, sealed and delivered the said deed freely and of her own and without any fear, threats, or compulsion of her said husband. Given under my hand and seal this tenth day of March, in the year of our Lord, 1835.

H. LEWIS, [SEAL.]

Exhibit H.

Agreement, June, 1852.

THE STATE OF ALABAMA,
Mobile County.

Whereas we whose names are hereunto subscribed have a common estate with Sidney E. Collins in all that lot and parcel of land lying and being in the city of Mobile, known as the Collins property, and bounded and described as follows: On the north by St. Anthony Street, on the south by St. Louis, and on the west by Royal Street, and east by the channel of the river, also in all that lot and parcel of land adjoining the northwest corner of the said Collins property, bounded on the west by Royal Street, on the north by State Street, on the south by St. Anthony Street, and on the east by the warehouse and yard known as the shippers' press warehouse. And whereas the said Sidney E. Collins has, with authority from us conveyed the last mentioned lot of land to Jacob Magee by deed in his own name, dated the 1st day of April, A. D. 1852, and a portion of the said Collins property situated on the west side of Commerce Street between St. Louis and St. Anthony Streets, to James, Samuel G. and John A. M. Battle, by a deed in his own name, dated the 20th day of March, A. D. 1852. And also another portion of the said property on the corner of St. Louis and Water Streets to Dorrame and sons by a deed in his own name, dated the 10th day of June, A. D. 1852, all of which deeds are recorded in the Record Office of the Probate Court of Mobile County. And since the said Sidney E. Collins has in the said several deeds covenanted to warrant and defend the titles to the said several portions of property to each of the said grantees, and thereby rendered himself individually liable to the expense of maintaining the said titles, and the consequences of failing so to maintain them.

Now, therefore, know all men by these presents, that we whose names are hereunto subscribed in order to secure the said Sidney

E. Collins against a risk greater than that proportioned to his interest in the said property, and in consideration one-sixth part of the said purchase money of the said property so conveyed to each of us as in hand paid by the Sidney E. Collins, do hereby severally and not jointly, but each for himself, his heirs, executors and assigns, covenant to and with the said Sidney E. Collins, his heirs, executors and assigns, that we will each for himself assume the payment of, and hold the said Sidney Collins harmless to the extent of one-sixth part of all the charges, costs and liabilities which may legally accrue against the said Collins in the defence of such titles as the above mentioned deeds may in law require him to maintain, if at any time soever the said titles shall be brought into litigation, or whensoever the titles that shall hereafter be conveyed by deeds made by the said Collins under our authority, and by us ratified and confirmed, of any portion of the said Collins property shall in accordance with the requirements and covenants of the said deeds to be made, be defended by the said Collins, and also one-sixth part of the purchase money with interest of said lands that may hereafter be recovered after the titles are fully defended and litigated, and we further covenant that if any or either of us shall fail to hold the said Collins harmless under the contingences, and in the proportions above mentioned, that then we, with the said Collins, will assume his or their share, who shall so fail of the expenses of maintaining and defending the said titles, and of the repayment of said purchase money as may be recovered according to our and the said Sidney E. Collins' share proportioned to our several interests in the said property. Signed and sealed this day of June, A. D. 1852.

Exhibits to bill filed November 27, 1855.

GEO. E. HOLT, *Clerk.*

(*Security for Costs.*)

U. S. CIR. COURT,
So. Dist. Ala.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, *et al.*

I hereby acknowledge myself bound for the costs in this case. Witness my hand and seal, at Mobile, November 27th, 1855.

(Signed) JAS. HOOPER, [SEAL.]

Filed November 27th, 1855. GEO. E. HOLT, *Clerk.*

Afterwards, to wit, on the twenty-seventh day of November, A. D. 1855, the following subpœna in chancery issued, to wit: —

(*Subpœna in Chancery.*)

UNITED STATES OF AMERICA,

Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

The President of the United States to the Marshal of said District, Greeting: You are hereby commanded to summon Drury Thompson, William F. Cleveland and James Campbell, defendants, who are citzens of the State of Alabama, to appear before the Honorable, the Circuit Court aforesaid, at the place of holding said Court, at Mobile, on the first Monday of January next, then and there to answer the complaint of Sidney E. Collins, who is a citizen of the State of Texas. And have you then and there this writ at the office of the clerk. Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the said Circuit Court, this second Monday of April, in the year of our Lord one thousand eight hundred and fifty-five. Issued the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-five.

Attest, GEO. E. HOLT,
Clerk C. C. Southern District of Alabama.

(*Endorsement.*)

The defendants within named are required to enter their appearance in this suit in the Clerk's Office on or before the first Monday of January, A. D. 1856, otherwise the bill will be taken as confessed by them. Attest, GEO. E. HOLT, *Clerk.*

(*Marshal's Return.*)

"Received November 27th, 1855, and on the fourth day of December, 1855, executed this summons by serving William F. Cleveland and James Campbell, each with a copy, and executed on Drury Thompson, on the 28th December, 1855, by serving him with a copy.
C. M. GODBOLD, *U. S. M.*
By WM. H. GASQUE, *D. M.*"

And afterwards, to wit, on the fifth day of January, in the year of our Lord one thousand eight hundred and fifty-six, being a day of a term of said Circuit Court, begun and held in and for said District at Mobile, on the fourth Monday of December, A. D. 1855, the following order was made in said cause, to wit:—

(*Order.*)

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, *et al.*

Upon the application of Messrs. Dargan and Hall, solicitors for the defendants, they are allowed until the first of March next to file their answers to the said bill of complaint, and that the cause be continued.

And afterwards, to wit, on the tenth day of March, A. D. 1856. The defendant, Drury Thompson, filed his separate answer to the said bill of complaint, in the words and figures following, to wit:—

In Chancery.

CIRCUIT COURT OF THE UNITED STATES,
for the Fifth Judicial Circuit and Southern District of Alabama.
Thompson's Answer.

Drury Thompson, one of the defendants to the bill of complaint exhibited and pending in said Court, by Sidney E. Collins against said Thompson, William F. Cleveland and James Campbell, protests against the complainant's calling on respondent to answer otherwise than under oath, and insisting on his right so to answer, and answering under oath says: He is informed and believes that at the time of the filing of the bill, complainant was a citizen of Alabama, and that the statement in the bill to the contrary is a mere pretence to give this Court jurisdiction. It is true, that a suit was instituted in this Court in equity, in the name of complainant, against the heirs and representatives of Joshua Kennedy, deceased, and others, and that it was prosecuted to success in said Court, and in the Supreme Court of the United States, as stated in the bill, and that Campbell and Chandler, a law firm, composed of John A. Campbell and Daniel Chandler, were the solicitors employed in prosecuting said suit, and their names appear on record. It is also true that after the return of the mandate from the Supreme Court at the April term, 1851, a decree was entered as stated by complainant. This decree, as respondent is informed and believes, was entered on the minutes of the Court while complainant was absent from Mobile. Respondent says before complainant left Mobile, it was agreed between complainant, respondent, Primrose, Cleveland and James Campbell, to take ten thousand dollars and a discharge from all the amounts to be refunded and allowed defendants in the cause in lieu of reclamations for property sold by Kennedy, and for rents, and understanding that the recovery would about give all the land south of St. Anthony Street to the complainant and those concerned with him, it was agreed by the parties to take the land south of St. Anthony Street and the ten thousands dollars in money or city property at the value fixed by the city assessor for that year.

Respondent was not present when the instructions in this respect were given to the Honorable John A. Campbell, and does not know whether he was specifically instructed to take half the property in general terms, or whether he was instructed to take as half all the property south of St. Anthony Street, as shown by respondent's letter appended to the bill.

The propositions appeared to be one and the same until respondent accurately measured the land, and ascertained that a mathematical half would cut off the parties in a good degree from St. Anthony Street. This being ascertained, and respondent having

learned from complainant that he had instructed Mr. Campbell according to the understanding before mentioned. Respondent insisted on St. Anthony Street as the line. Mr. John A. Campbell supposed, from stepping off the land with respondent, and from an examination of maps in his possession, that it would substantially be the line, and evidently thinking that having made the proposition and arrangement on the understanding of one-half the parties ought to abide by it result as it might. The difference arose, referred to in respondent's letter appended to the bill. It was upon this difference, arising either from a misunderstanding of the exact instructions given to Mr. Campbell, or from the want of the employment of exact language by complainant in the instructions, that respondent dissented from the action of Mr. Campbell, which respondent does not doubt was taken in strict accordance with his views of instructions, and of the requirements of good faith in their execution. In the understanding between the parties, St. Anthony Street was to be the dividing line, the supposition existing that this would give half, Mr. Campbell understood, and had acted on the idea that half mathematically was to be taken, and this constituted the whole difference. And the decree which Mr. Campbell had entered was subject to this misunderstanding, strictly and properly the decree determined on and assented to. Respondent looking at the matter from the understanding between the parties when Mr. Campbell was not present, and taking it for granted that the complainant's instructions had been as specific as the understanding, dissented, as shown by his letter appended to the bill. Respondent believed at the time, that Mr. Campbell was acting as to him seemed right and proper, and does not doubt but that he supposed he was pursuing instructions and carrying out an arrangement made by him pursuant to them. Respondent taking a different view of the understanding of the parties, was unwilling to submit to a decree which to him seemed not fully to embrace such understanding. Hence his letter to Mr. Campbell appended to the bill. The bill was dismissed as to James Campbell, who, respondent takes this occasion to say, is no kin or connection of Hon. John A. Campbell, and as to the bank, on the ground, as respondent was advised and believes that they were *bona fide* purchasers without notice. The decree in lieu of the property thus sold by Kennedy, ordered the purchase money and interest to be accounted for. This was a matter about the propriety of which no question was raised by the parties; but on the contrary, in lieu of these lands, and of rents, and in consideration of complainant's not being held to pay to Kennedy's heirs the money and interest paid by him to Innerarity, as required by the decree of the Supreme Court, and also the purchase money and interest paid by Kennedy to George and Sidney E. Collins as required by the decree, and for the permanent improvements allowed by the decree, ten thousand dollars in money or land was agreed to be received by Collins, respondent, Cleveland and

James Campbell. Land was received in lieu of this sum, and it was afterwards sold for fifteen thousand dollars. Respondent says it was material to have a definite line fixed and established upon the land, but respondent cannot see how this desirable object could be accomplished by proceedings under the decree, or otherwise than by agreement between the parties, or litigation with other parties not before the Court. The decree was for the south half of the tract. The tract was bounded on the north by the Orange Grove grant. The boundaries between them were in dispute or in litigation, and the owners of the Orange Grove were not before the Court in the Collins case, and this was the reason why respondent was specially desirous that St. Anthony should be named as the line. The dividing line was formally arranged as set forth in the bill, and it may have been accomplished by Collins. Respondent does not know how this was, nor does he know whether Mr. Campbell made any efforts to accomplish it.

Respondent is informed that in the final arrangement, a bond on Cleveland was given up, but of the character of the bond, or what, if any, liability existed under it, respondent is wholly ignorant. He never saw it. This was a matter between Collins, Cleveland and Primrose, of which respondent is ignorant. Respondent says that during the spring or summer after the execution and delivery of the deed to complainant by the executors of Kennedy, the parties interested (not the complainant alone, but Cleveland and James Campbell chiefly), compromised with some of the tenants, and those interested, as hereafter more fully shown, were let into possession. Prior to the commencement of the suit, as well as during its progress, and after its decision, complainant executed the deeds and instruments in writing hereafter mentioned, which were not obtained by fraud, and which, as respondent is informed and believes, were and are good between the parties.

Respondent proceeding to answer complainant's "narrative" says to complainant's allegations in respect to the representations, negotiations and dealings had with respondent in Texas on his first visit, are untrue. Whilst a youth, residing in Mobile, respondent became acquainted with George E. Collins the elder brother of complainant, then a youth also.

Respondent learned from the old French Creole population, that Joseph Collins, the father of complainant, had been in the service of the Spanish Government at or near Mobile, and had held interests in lands in Mobile and its vicinity. This brought about conversations with George on the subject, and respondent urged him to look up his father's papers, and to see what were his rights, if any. Said George made an effort to look into these matters, but without success. He became convinced from representations which he said had been made to him, that his father and mother had never been married, and that his father's titles, if any, could not be made available, and he abandoned the pursuit, and with complainant sold

out his claims to Joshua Kennedy soon after his arrival at age. The vague idea that the heirs of Collins had some right, had become impressed on respondent's mind. He had spoken of it to others, and had expressed a belief that something might yet be got from it. Some years after, in a conversation with William D. Primrose, respondent found that he too was under the impression that there were grounds for the institution of a suit against Kennedy's heirs for the lands between St. Louis Street, and the Orange Grove, and for the Dubrocca tract. George and Sidney E. Collins had left Mobile several years before. Respondent was ignorant of what had become of them. Respondent conversed with Wm. F. Cleveland on the subject, but who knew very little of the matter, and the result was that in November, 1842, Primrose, Cleveland and respondent, agreed to look up the heirs of Joseph Collins, and to buy out any rights they might have in their father's estate, and to sue for the same. They heard that complainant resided in Texas, and early in 1844, respondent and Primrose, without having consulted, so far as respondent knows or believes, any attorney, and without having taken any legal advice, went to Texas, partly on other business, but chiefly to find complainant, and to make some arrangement with the heirs of Joseph Collins for buying out their interest.

Respondent did not know until long after his return from Texas, whether the laws of Spain, or of Alabama would regulate the descent of Joseph Collins' estate, he having died before the exchange of flags, and under a *de facto* government of Spain, nor did he know whether complainant was under the law entitled solely, or with his mother to the estate, if any.

Respondent and Primrose, early in January, 1844, went to Liberty in Texas, near which they had heard complainant was, and met with him. Respondent conversed with and inquired of him in relation to the sale made by him and his brother George to Joshua Kennedy of their interests in Mobile, and told him that respondent had long been under the belief that his brother had been misled by representations made to him, and that he and his brother had thereby been induced to convey their interests of great value, that at the time complainant executed his deed to Kennedy he could not have been of age. Respondent knew said Sidney in Mobile when a boy, and had arrived at this conclusion by a comparison of said Collins' size and appearance as to age with respondent's own age. Respondent told complainant at said time, that in consequence of his minority when he made the deed, and on the ground of misrepresentations by Kennedy, and of his, and his brother's ignorance of their rights, suits could be instituted with a prospect of success, that respondent was willing to undertake it and take the chances, that if respondent succeeded he was willing to give him for the property ten thousand dollars, and that to litigate and prosecute the suits would probably cost ten thousand dollars more. Com-

plainant assented to the proposition, expressing a doubt whether the deeds executed by himself and brother could be got over, but saying if they could be, he would like it very much, and if he could realize seven good negroes for it he would be satisfied.

In accordance with this understanding, respondent drew and complainant executed and delivered to respondent a deed, bond, and power of attorney, copies of which are appended to this answer, and made part of it, marked A, B, C.

Respondent, pursuant to his agreement with complainant, gave him a written undertaking, which is hereto appended marked D, the original of which is in the hands of complainant.

Respondent does not know, but supposes Primrose may have been a stranger to complainant when they met in Texas. It is untrue that respondent or Primrose, so far as your orator knows, represented to complainant that they had been on business together in other parts of Texas, and were on their return to Mobile. Respondent informed complainant that he and Primrose had come from Galveston to Liberty on a small steamboat. Liberty was about north from Galveston, and this information itself contradicted the idea that they had come to Liberty on their way to Mobile.

Respondent expressed pleasure at meeting with complainant, and did refer to reminiscences of their former acquaintance in Mobile. Respondent was once or more at complainant's house on his invitation, but did not stay several nights at his house. Indeed, respondent does not remember to have stayed at his house any night during that visit to Texas. He may have stayed one night after the papers were executed, but he thinks he did not.

Respondent did not refer to complainant's lands in Mobile in a casual way, but referred to them in the direct manner herein before set forth. He did in his conversations with complainant ask him if he had executed any deeds for them, and what Kennedy had given him.

Respondent did inform complainant that Joshua Kennedy was accused of cheating in land, and expressed his belief that he and his brother had been induced to make deeds to Kennedy by misrepresentations, and in ignorance of their rights. Respondent denies that he told him that Joshua Kenndy, or any one else was trying to extend the Dubrocca tract over respondent's residence, or that his residence was near said tract, or that he said anything to complainant about writing a deed for any such purpose as is alleged in the bill. He told complainant that Joshua Kennedy was dead. Respondent says, after his contract was agreed on, and understood with complainant, but whether before or after the papers were executed, respondent does not remember, in the course of a conversation with complainant, he told him thereby that Joshua Kennedy had so located his Murrell (not Dubrocca) tract, that it covered respondent's land on Spring Hill road, and that he had thereby been forced to relinquish the larger part of it, and to purchase that por-

tion of the ground on which his residence stood. Respondent also at the same time spoke of the heirs of the Kennedys making efforts to extend the location of the Dubrocca tract over a part of other land owned by respondent and others, and that he thought complainant's deed would fortify him in that quarter. Respondent denies that he told said complainant any such thing as that he would pay to complainant whatever advantage the deed might be to respondent. Complainant expressed no reluctance to making a deed to respondent, made no objection on the ground that it would be making a deed to lands he had already conveyed, received no such encouragement or assurances in reference thereto as are set up in the bill. Complainant told respondent that he had made a deed to the land which had been since recovered in the chancery suit; but in reference to the Dubrocca tract, he stated that he did not remember having made any deed, and said that he had once given a power of attorney to his father in Mississippi to sell some lands, but that he thought that only applied to some lands in Mississippi. The whole story in the bill in reference to the quit claims, and respondent's advice in relation to it, are mere fabrications of complainant.

Respondent refers to a copy of the deed before appended to this answer. He will produce the original at the hearing.

The deed is not a quit claim, and complainant so knew it, and knowing it, required of respondent the bond, a copy of which has been appended to this answer marked D. Complainant readily acceded to respondent's proposition to convey to him as before stated, and was pleased and satisfied at it. He assented readily, and not finally or reluctantly, upon coming to a verbal understanding. Complainant proposed to respondent to go hunting, and respondent did so, stating that Mr. Primrose would draw up the papers. They went upon the hunt with some one, respondent does not remember, and killed a deer. It is possible some conversation might have taken place while on the hunt respecting the matters of complainant's land claims, although respondent does not recollect such to be the fact. During their interview, and after the matters embraced in the deed were understood, complainant and respondent had a general conversation or conversations about complainant's land claims. Respondent did tell complainant that he was Clerk of the County Court of Mobile, keeper of the records, and could look into the matter, and did propose that complainant should give him a general power of attorney, and complainant willingly executed the power before appended to this answer. The power, however, was made general as to all complainant's land, with a view more particularly of covering certain supposed claims of complainant's father to lands in Ohio, in reference to which some vague paper existed, and in no expectation under it of finding other claims in conflict with the Kennedys. No idea existed, or was expressed of annoying Kennedy's heirs (Kennedy was dead, and so respondent told complainant), by reason of any action under the power in re-

ference to other lands in Mobile than those conveyed in the deed. Respondent did tell complainant that he expected to employ Mr. Campbell to sue Kennedy's heirs for the lands in the deeds. He told him Mr. Campbell was his lawyer, but did not tell him that he was his lawyer in reference to this matter, nor was such the fact. On the contrary respondent had never spoken to Mr. Campbell or Mr. Chandler his partner about the matter, had never employed, or offered to employ either of them about it. Had not obtained from either of them an opinion in reference thereto, did not speak to or employ either of them until his return from Texas, and then spoke to Mr. Campbell, who peremptorily refused to look at a paper in the case, or to talk about it, until *complainant* paid him down in gold one thousand dollars. Mr. Campbell required it in gold, and it was so paid. It is true he did say Mr. Campbell, who was generally his lawyer, was the smartest lawyer in Mobile, and in this statement merely asserted what was notorious to the people of Mobile. Respondent does not remember having spoken of any influence that the fact of Mr. Campbell's bringing a suit or suits would have in creating a desire or willingness in the adverse party to pay for a compromise. Had he so expressed himself he would have said nothing but what he believed to be true. Respondent denies that Primrose in respondent's hearing, or with his knowledge, represented respondent as being worth sixty thousand dollars, or any other sum. If Primrose made any such statement it was untrue. Respondent did nothing and said nothing to obtain the confidence of complainant further than as before stated, and he does not suppose that complainant, who represents himself in another part of his bill as accomplishing a matter in a negotiation with William R. Hallett, who is esteemed as one of the finest financiers in Mobile, which Mr. Campbell had failed to do, was so stolid and void of penetration, and so childlike as to suppose that respondent's whole aim and intention was to ferret out and carry through an important suit or suits at his own costs, solely on the ground of acquaintance with complainant in boyhood.

Respondent says that complainant is a shrewd, sensible, and intelligent man; alive to his interests, and prompt and ready to enforce his rights. This matter was under discussion for several days before it was consummated by executing the papers; was deliberated on by the complainant, and was finally executed with a full knowledge of their purport, and of the uses to be made of them. Primrose, for some reason not remembered, did not draw the papers as it was agreed he should do, when complainant and respondent went on the hunt. Respondent afterwards drew them. The papers drawn were executed, and copies are appended to this answer. A reference to them will show that they are not properly described by complainant. But one power of attorney was drawn or executed, besides these papers. Respondent gave complainant a bond, which he has retained to protect him against all costs and

expenses. It is before set out as a part of this answer. The transaction in Texas summed up was this: respondent thought complainant's rights would justify the risk and trouble of a long, expensive, litigated, and doubtful suit, or suits. Complainant felt inclined to enter into no such litigation, at the risk of the cost, expenses, and uncertainties attending the same; but was willing and anxious for respondent to undertake and carry on these matters at his own costs, trouble, and risk, if he (Collins) could get $10,000 on recovery, and lose nothing if the matter failed, and on this basis it was arranged. The expression of complainant was, that he would be satisfied if he could realize out of the matter seven or eight good negroes. Respondent says it may be true that the papers executed by complainant appeared to him to have been prepared with great care and comprehensiveness. He was a cautious, sensible man, and no doubt examined and considered them well. Respondent believes it to be true that complainant surveyed the matter in all its bearings, even to the form and exact character of the papers he was about to sign. Respondent does not remember saying anything about wishing to show the papers to the Kennedys, or thereby intimidating them. Respondent, during his visit to Liberty, and after the papers had been executed, did present complainant with a silver watch and a double barrelled gun. He and Primrose left the next day for Galveston, by way of Anahuac, about twenty five miles from Liberty. They went on horses, procured by complainant. On separating, respondent gave complainant fifty dollars. He does not remember having any motive in the act, other than to give a small sum to an acquaintance who had been put to inconvenience on respondent's account. Complainant and his wife appeared to be in poor health. Respondent says he, with the aid of the other gentlemen, his co-defendants, and Primrose, have not only ferreted out and prosecuted to success the rights of complainant, which there was little or no probability of his ever discovering, but they have entered into no bargain with him that he was not ready and anxious to make. Respondent has kept nothing concealed from him as to his rights; but told him at first that they were large and valuable, invited him to participate in the case during its progress, and had him to do so, and he did do so, and learned as it went on its full history and importance. He has never attempted to hold him to his Texas agreement, but had left the parties open to fair consideration and adjustment, until the suit was finally over as hereinafter more fully shown. Complainant has not only had his rights respected, but liberally dealt by; and he has in various ways, as hereinafter more fully shown, assented, recognized, and acted on the settlement which he now seeks to disturb—scrupling not, in his avarice, to blend in indiscriminate denunciations the parties and attorneys through whom he has been made rich. Respondent, since this bill was filed, has found a few of the many letters written by complainant to re-

spondent, most of his letters having, before he expected this controversy, been lost or destroyed. They begin February, 1844, and come down to late in 1850. He will produce and prove them at the trial. They will establish the intelligence of complainant; his keen interest in the cause, in the various stages of its progress; his knowledge of its merits; his appreciation of the great and growing value of the estate in controversy; his certain reliance upon success; his participation in its investigation; his knowledge of the fact that Primrose was a co-operator with respondent; that complainant regarded the case as his own, unrestrained by the Texas papers; that he was consulting Mr. Campbell and receiving from him favorable opinions of his case; that respondent was in frequent correspondence with him about the cause; that respondent had furnished him with at least one thousand dollars for his own personal use, and his full appreciation of the fact that the services of respondent were of the greatest importance to him.

Respondent supposes complainant's account of his father, and of his own life during his minority, may be generally correct. He, however, knows nothing of his schooling during his minority; but respondent says he has been informed by complainant, and truly he has no doubt, that he went to school in Mississippi after he left Mobile, and that he was engaged in mercantile business with his brother in Williamsburg, Mississippi. Certain it is that he now reads and writes, and converses with much intelligence.

Complainant informed respondent that he once kept a hotel in Houston, Texas. As an evidence of his intelligence, and of his own knowledge of his intelligence, respondent says on the 7th September, 1850, complainant wrote respondent a letter, in which he says: "The reason why I was silent in my last upon the subject of Texas boundary, and the probable conflict with the Federal Government, was not because I lived in a dark corner where the war spark had not reached. It was because I dreaded the issue of that question, for I conceived I could see in the political horizon a disposition on the part of northern fanatics, whose minds are excited against Texas on the subject of slavery (to which is added some of the southern Whig influence), to take advantage of Texas in the settlement of this vexed boundary question. However, I hope the question will be finally settled to the satisfaction of both parties, without compromising the honor of either. Though the proposition of Mr. Pierce has many opposers in Texas, and it is very uncertain whether Texas accedes the proposition or not." He is a man of much caution; of a keen sense of the rights of property; of an active and investigating turn of mind. In all these respects he is in nowise inferior, in respondent's opinion, to either of the defendants in the bill. His manners, his appearance, his language, all indicate a man of good information, who has mingled much and profitably with the world. Respondent does not know how long

he remained in Mississippi, nor does he know when he went to Texas.

Respondent, from said Collins' intelligence, does not believe that he knew nothing of the value of lands in and around Mobile, though it may be that he had no exact or accurate knowledge of their value. Respondent says he supposes complainant had but little knowledge of the estate left by his father. He does not know whether he had ever possession of his father's papers; he does not know what knowledge he may have gained respecting their contents; but supposes that he and his brother George must have talked much about his father's matters. They were intimate and friendly in Mobile, and lived together in Mississippi.

Respondent does not know what was his knowledge of his father's will. In the interviews referred to, respondent gave him the information before set forth in this answer. He told him that the estate was large and of great value, and that he thought suits could be instituted with a prospect of success. Respondent had seen what purported to be a copy of his father's will; but gained no material information from it. It is untrue that respondent was familiar with said matters; he had a general knowledge, such as induced the belief which he expressed to Collins, and the action which he was proposing to take.

Respondent has before set forth the extent of his knowledge in these respects. Respondent denies that his statements or acts were calculated to impress complainant with the idea that the titles were of no value to complainant, or that they would only possibly be of value to respondent in his controversy with Kennedy. Respondent does not remember whether or not he wrote complainant in the interval of time between their parting in Texas and respondent's visit in January, 1845. He did not see him in the interval, and nothing had transpired that was material, except the bringing of the suit. The answers had not been filed when respondent left home.

Respondent visited complainant in January, 1845. He told complainant that his wife was in ill health, and he had intended taking her to Havana had he found a steamer; but not doing so, he had taken her to Mrs. Wharton's, an old and intimate friend in Texas. The statement was true. Respondent expressly told complainant that when he left home, he intended to visit him before returning to Mobile. Respondent did take some presents to Mrs. Collins and to complainant. Spoke of the controversy with Joshua Kennedy's heirs, and told complainant that he had brought suit in complainant's name. That the defendants were badly alarmed, and were about to file their answers; and respondent, instead of depreciating the prospects of a recovery, expressly told complainant that he was sanguine of success. That Kennedy's heirs would probably send some one to propose a compromise, and that he must not accept it, and must be on his guard, as the agent would probably try to pick

up something from his conversation that might injure the suit. Respondent remembers of complainant's making no objection, nor expressing any surprise that the suit had been brought in complainant's name.

Respondent did tell complainant that he had spent a good deal of time and money on the case, and that complainant must not assent to any proposition that the heirs of Kennedy might make him.

Respondent feared a compromise might be made with complainant, as he had understood the heirs of Kennedy were about to send an agent to endeavor to effect a compromise, and was particular to lay before complainant fully all he knew about the case and its merits, and to inspire him with strong hopes of success, in order that he might not be inclined to accept offers that respondent was convinced would be made, and which were shortly afterwards made.

Respondent denies that he told complainant that the matter had cost him $4,000.

Respondent did advise him that the agent would probably depreciate the claim, and gave him full possession of its value and merits, in order that such efforts might prove abortive.

The allegations in the bill respecting the law of descents which governed his father's estate are untrue. He told complainant that his father had by his will given his estate to his children; but that he had learned he had before that conveyed a portion of his estate to complainant's mother, by the name of Elizabeth Wilson, and that he did not know what rights she might have.

When respondent left complainant's house and returned to Galveston, complainant accompanied him to Galveston. Respondent did give him fifty dollars. He seemed to need it, and then seemed to feel grateful for it. Respondent is informed, and believes not long after respondent left, Col. Platt, the agent of the heirs of Kennedy, called on complainant and offered some considerable sum of money as a compromise; but respondent does not know what it was, nor does he know what transpired between them. Complainant was quite too shrewd a man not to see in these facts that his rights were important and promising, and from his refusal of the offer, and his resolution (carried out) of coming to Mobile to look into the matter, respondent believes that complainant attached equal importance to his rights, and was resolved to look minutely into, and ascertain them for himself, as he did fully. Complainant called at respondent's office on his arrival at Mobile; there he was introduced to Mr. John A. Campbell, who complainant knew was the attorney conducting the case. Respondent does not remember cautioning complainant at the time not to obtrude on Mr. Campbell. He thinks it highly probable that he more than once so cautioned him, and told him in substance that Mr. Campbell was a person who managed things in his own way, and did not like to

have his clients around him. That he was an eminent lawyer, a man of high character, who would do everything right; but would suffer no interference, which was Mr. Campbell's character pre-eminently. It was and is well known in Mobile. He was laborious, studious, retired, and austere, and bore with little patience any intrusion on his studies or engagements.

Complainant, during said visit, and during his several visits while the suit was in progress, made complainant's house his home, at such times as respondent was keeping house, on respondent's invitation, and on his own free acceptance. Part of this time respondent was boarding, and then complainant, of his own choice, boarded at the same house, and respondent paid his board, complainant not having, or pretending not to have the money to pay it. Respondent regrets that these acts of kindness are sought to be changed into accusations against respondent.

During his visit in the winter and spring of 1845, which was a long one, the suit was the engrossing matter of his thoughts. He looked into it, talked about it, and attended to it with great zeal and devotion. He attended the examination of the witnesses, and paid great attention to it. He frequently called on Mr. Campbell, and respondent supposes knew his views. Respondent did advise complainant, and he believes Mr. Campbell did also against a compromise, and the very advice sought and obtained shows that respondent was not insisting on his Texas deed, and that complainant regarded himself entitled to consider and act on a proposition to compromise, and that his rights were large and valuable. Complainant after the April term of the Court returned to Texas, and came back to Mobile and attended each term of the Court, and actively participated in his case. While in Texas he frequently wrote to respondent on the subject of the suit, looked for evidence in Texas, and evinced throughout great zeal and interest in the cause. Respondent denies that he restrained complainant. He did advise him not to talk freely about the cause, and put him on his guard against being entrapped to say something that might injure the suit.

The heirs of Kennedy were numerous, wealthy and influential, felt great interest in the cause, both because of the magnitude of it, and because the integrity of Joshua Kennedy was involved, and respondent felt and expressed the necessity of caution.

Respondent says complainant went where he pleased, and did as he pleased. Respondent was closely engaged in business, and left Collins to amuse, engage, or interest himself as he might.

Respondent thinks he advised complainant to be careful of, and guarded towards Primrose, that he though Primrose indiscreet in conversation. The whole tenor of respondent's cautions were to avoid anything that might injure the case. But it is wholly untrue that respondent did or said anything tending to restrain Collins from a full investigation and ascertainment of his rights, on the

contrary he sought to have him place himself forward and to engage actively in the suit. Respondent did frequently allude to the fact that he had paid and was liable for large sums on account of the suit. He did not speak of ten thousand dollars as the sum he had paid and was liable for. Respondent had paid Mr. Campbell one thousand dollars to look into the case and give an opinion, and Messrs. Campbell and Chandler he had undertaken to pay twenty-thousand dollars more upon the success of the case. Had paid large expenses and fees in taking depositions, had furnished complainant the money on which he made his trips to and from Texas, had furnished him money while in Mobile, was under his undertaking with complainant liable for the heavy costs of the suit, and felt anxiety on account of these things. Respondent does not remember making these representations in January, eighteen hundred and forty-seven, though he may have done so. Upon the idea asserted in some parts of the bill that respondent was holding and insisting on the deed and papers first obtained in Texas, respondent does not see how complainant should feel that respondent desired from complainant some adequate compensation, or how the complainant should feel able not only to be just but liberal, as he asserts in his bill. The fact is, as is apparent from that part of complainant's bill, that respondent never sought to hold complainant to these papers and agreements, but was acting with him in the most liberal spirit, doing all he could to promote his cause, leaving for future adjustment his rights and the rights of those concerned with him. Respondent knows nothing about complainant's knowledge of the law of descents of Alabama, or when, or where he obtained his knowledge. Respondent does not know that complainant knew the exact terms on which his co-defendants and Primrose were to share with respondent the result of the gain from success, but he knew long before eighteen hundred and forty-seven that Primrose was connected with the matter, and the very power of attorney which he gave respondent in Texas, shows that other persons were looked to as actors in the matter. Complainant had over and over again, expressed his great gratitude to respondent and his desire to share with him as "a brother." Under these professions, complainant in 1847, not in January, proposed to give respondent as his compensation one-half of the estate which might remain after paying all expenses and adjusting the interest of others. Respondent did assent to it, but no conveyance was made to that effect in 1847. The matter thus stood under a verbal understanding on the thirteenth of January, eighteen hundred and forty-nine, when complainant made a deed to respondent, a copy of which is hereto appended marked Exhibit E; the original will be produced at the hearing. This deed conveys to respondent in substance one-half "after paying all costs, liabilities, and expenses of the litigation in relation to said land and suits, and provides that the active management of the suit should be subject to respondent's control

and direction as it before had been. Respondent discharged complainant from all agreements before made by him, and from all claims except those thereby recognized. Respondent thinks that the undertaking of eighteen hundred and forty-seven, was put in the shape it assumed by deed in eighteen hundred and forty-nine, by Mr. Campbell at his office. A clean copy was made by respondent, which was executed by complainant. Upon the execution of the paper of 13th January, eighteen hundred and forty-nine, respondent entered on the power of attorney given him in Texas a revocation, a copy of which is hereto appended marked F. Respondent says complainant shortly after the execution of the paper of the 13th of January, eighteen hundred and forty-nine, wished respondent to give up the old papers, which respondent did not evade, but declined. He informed complainant that it was possible they might serve respondent in defending against the Dubrocca claim. One of the chief reasons why he did not surrender them was, from a desire to retain them until the interest of Primrose, Cleveland and James Campbell should be adjusted, and in order that they might not charge respondent with bad faith in surrendering papers which might form a basis on which their rights might be considered in an adjustment of them.

Complainant called on Mr. John A. Campbell in reference to this matter, and he at complainant's instance called on respondent. Respondent told Mr. John A. Campbell that the reason he did not wish to give them up, was because he was between two fires, that he had given obligations to others for interest, and that if he settled finally with complainant he should be exposed on them, and that he thought it best to hold all the papers until the end of the suit, and he would then settle with all. Respondent is advised and believes that Mr. Campbell communicated this to complainant, and that he was satisfied with it. Respondent heard no dissatisfaction expressed at this.

Respondent did not burn the old deed, but still has it, cancelled. Respondent has endeavored to remember when he marked it cancelled, but cannot remember whether it was then done, or before or after the deed of eighteen hundred and fifty-one. Respondent does not remember what, if anything, Mr. Campbell advised complainant as to the virtue of the Texas deed. Respondent supposes complainant still holds defendant's obligation given him in Texas. Respondent says that during the progress of the cause he corresponded a good deal with complainant in reference to it, and held out to him strong hopes of success, and these letters which are carefully withheld will so show. Respondent thinks complainant signed an agreement to pay to Messrs. Campbell and Chandler their fee of twenty thousand dollars contingent on recovery on thirteenth January, eighteen hundred and forty-nine, and not before. The contract of respondent for a fee was twenty-five thousand dollars for

the Dubrocca and Baudain tracts, and it was modified to twenty thousand dollars for the Baudain.

Respondent did inform complainant of this, and he ratified it; complainant did leave Mobile for Texas after the hearing and decree in April, eighteen hundred and forty-seven, and returned about the first of the year eighteen hundred and forty-nine, when he remained in Mobile a considerable length of time looking into the suit and living on the bounty of respondent. Respondent knows nothing of his having seen Mr. Campbell on the day of complainant's arrival in February, 1851. He does not believe that Mr. Campbell then, or subsequently invited complainant to his office; certain it is that he did not go there with respondent on that day.

The story of complainant in reference to the visit to Mr. Campbell's office, and what was there done, is a tissue of falsehood. The facts are these: One or two days after complainant arrived in Mobile, he informed respondent that he wished respondent to go with him to Mr. Campbell's office that evening, that he had made an appointment with Mr. Campbell to meet respondent and the others interested, in order that they might come to some understanding and adjust their interest; that, although respondent had not been as full and explicit to him on the subject as he might have been, still he had been aware that the others were interested with respondent, and that Mr. John A. Campbell had long before informed him upon the subject, that he had not known the extent of respondent's understanding and agreement with the others, but he had always left the matter in respondent's hands, and was satisfied with what respondent had done, and was willing to abide by it, and share with respondent as a brother after adjusting and satisfying all expenses, advances and undertakings, and agreements about the suit, and this was the first and only intimation respondent had of any contemplated meeting of the kind; it was before dinner. The matter formed the subject of constant conversation between complainant and respondent up to the meeting, they fully and freely talking the whole of it over, and respondent fully explained to him his (respondent's) position towards, and understanding with the others. Respondent explained to him that Primrose had looked up and attended to taking the evidence, that Cleveland knew much about the property, and that his information and aid in this regard had been of service, that the prospect was more money would be needed in carrying on the suit than respondent, Cleveland and Primrose, could easily advance, and that James Campbell had advanced and had somewhat aided in the suit, that it became necessary to enlist Mr. James Campbell or some one else who would advance the money. At the appointed hour (after tea) Collins and respondent went to the office of Mr. John A. Campbell, and there met Cleveland, Primrose and James Campbell. The matter was talked over at length, and some one of the parties (not respondent) referred to John A. Campbell for his opinion as to how the settlement should

be made. Respondent said, that in adjusting the matter he wanted Mr. Collins to be dealt liberally by, as he had always intended he should be, and also that the parties should be satisfied to agree and settle among themselves, and that he would be satisfied be his portion what it might.

It was proposed by one of the parties (he thinks it was by James Campbell) to leave the matter to Mr. John A. Campbell, which was assented to by all. Mr. John A. Campbell stated that he had never seen the written agreements between respondent, Cleveland, Primrose and Campbell, but had known that they were interested in the matter, and supposed that each one had rendered services, or had been of service in advancing money, &c., in the matter, and suggested a division of one-third or two-sixths to Mr. Collins, and one-sixth to each of the others.

Mr. Primrose stated that he thought he ought to have as much as any one, as he had done more in the matter than any one. To which Mr. John A. Campbell replied, that the original right to sue for the property was in Mr. Collins, which was a higher claim, and should entitle him to a larger share. Each and all the parties appeared satisfied, and so expressed themselves.

Respondent says, that before leaving the office of John A. Campbell, some one of the parties, he does not remember who, said something about drawing the papers. Mr. Campbell told us to go and reflect on the matter, and when we concluded what to do, to come, and he would have the necessary papers drawn.

They soon after left Mr. John A. Campbell's office, Mr. Collins and respondent walking together. After they had passed down the steps, at which time complainant stated to him that he could have wished that a larger share or portion should be allowed to respondent.

Respondent told him that he was satisfied, and had not a word to say, although he thought *thought* that he should have had a larger share.

To which complainant replied, that it will make but little difference, as the one-third to be allotted to him, and the one-sixth to respondent, added together, he would divide with respondent, and that it would be more than enough for both of them. The parties went to an oyster-house, and took supper together, talked the matter over fully and freely, all appeared satisfied, and so expressed themselves. The subject of holding the property together, and building it up together to a better advantage and uniformity, was suggested and discussed. After the party had broken up, and the next morning, complainant expressed pleasure and satisfaction at the proposed settlement and adjustment of the matter. Spoke in high terms of Mr. John A. Campbell, and of his sense of justice. In a few days the parties met at the office of Primrose, when were produced two or three deeds in the handwriting of Mr. James H. Campbell, then a student of law in the office of Messrs. Campbell

and Chandler. They were read over. Another copy was made by respondent; and at Primrose's suggestion, respondent added an undertaking by Collins to procure his wife's relinquishment of dower, and they were executed. A copy of the one received by the respondent is hereto appended, marked G, and made, with the copies of other papers appended to this answer, a part of the same.

The pretences and statement in the bill in opposition to the foregoing narrative in this answer, respecting the interview in Mr. Campbell's office, or preceding and introductory to it, or respecting the drawing and execution of the papers, are false and without the semblance of truth. There may have been some conversation respecting the account, the lines, and what remained to be done in the case. The interview was a long one. It consumed a winter's evening. It was full, free, and open, without misrepresentation, and without suppression of anything. The pretences by complainant, that he was surprised at the interest of the parties, or expressed any surprise, is false. He knew it all before, and went there expressly to adjust them.

There was no paper drawn that night, and no instruction given to draw any. Complainant had ample time for consultation with any counsel he might desire. Was as fully informed of the decision of the Supreme Court as respondent. Respondent does not know whether he had seen the opinion or read over the bill. He had full information of the value of the property, and during the progress of the cause examined the tax assessor's books, and seen it assessed at several hundred thousand dollars.

At the very interview in Mr. Campbell's office, it was spoken of as being worth at least two hundred thousand dollars. Complainant well knew the value of what he was called on in good faith to convey. Instead of feeling bound to yield to Mr. Campbell's suggestions, or surprised at the number of claimants, complainant was rejoiced at the liberality which suggested one-third as his portion. He had, respondent believes, heard of the success of the suit before he left Texas; a result of which he had no doubt, as his own letter to respondent will show. Respondent had sent him a copy of Mr. Campbell's argument in the Supreme Court, and thinks he had written him of the successful result.

Respondent recollects nothing having been said at the meeting in the office of Primrose about not recording the deeds. Primrose took no deed; but took an agreement from Cleveland, Campbell, and respondent, to secure his sixth. Why he preferred this, respondent does not know; but supposes it was done to prevent his creditors from reaching it.

Primrose suggested that the deeds be not recorded, and respondent, knowing that registration gave his deed no further validity, and that he was with his co-proprietors in possession of the property, did not record it. Respondent heard nothing said about making any further deed or deeds, except that some time after-

wards he heard Primrose speak of wishing it, when respondent replied, that his deed was good enough, and that he wanted no other. Primrose seemed anxious to have Collins make further conveyances, and annoyed respondent about it, to which respondent made the reply first given, and before stated. Respondent has before answered as to his understanding of the terms on which the matter should be adjusted with Kennedy's heirs. It is true that complainant returned to Texas in the spring of eighteen hundred and fifty-one.

And that respondent wrote complainant a letter, of which he (complainant) has appended a true copy to his bill; but for greater certainty he insists the original be produced, if complainant thinks it a material part of his case. On complainant's return to Mobile the difficulty about the alley ways had arisen; but it was not the only difficulty, and respondent refers to a previous part of complainant's bill to show that the desire to make St. Anthony street the line was a difficulty existing with the executors and heirs of Kennedy, subsequently adjusted by negotiations. Complainant yeilded readily, and in spite of the respondent, to the claim, and executed a deed for them. Respondent never did. The matter referred to in respondent's letter, appended to the bill, created an alienation between Mr. John A. Campbell and respondent, which he supposes still exists; but respondent, in justice to Mr. Campbell, says the charges and insinuations of the bill in that regard are maliciously false.

Mr. Campbell thought they had been dedicated to such purpose by Joshua Kennedy. The claim was not for ways to be allowed for alleys; but it was that alleys which existed around two sides of the building, and even paved and used as alley ways, should be respected. Complainant and the defendants to this bill have since sold and conveyed all the property adjacent, and have expressly ratified the alley ways in the deeds. The fee of Messrs. Campbell and Chandler was adjusted as complainant states.

The terms were very indulgent. Complainant, respondent, and his co-defendants united in a mortgage on part of the property to secure the same. Mr. Sargent's fee was arranged as complainant states. Respondent is informed and believes that Mr. Sargent wrote Mr. Campbell that his health would not permit him to do justice to the case, and insisted on his going to Washington and taking part in the argument.

Mr. Campbell did so without asking further fee, except five hundred dollars to pay his expenses.

Respondent thinks this fact alone should have made complainant sparing of his denunciation against Mr. Campbell. He went at the earnest and pressing solicitation of those interested, and left a large and pressing business to do it, and his doing so was considered by complainant as a matter of great interest to the parties. Respondent does not know that the fee of Mr. Campbell, or of Messrs. Campbell

and Chandler, was questioned. Its adjustment was delayed, at which he supposes Mr. Campbell became irritated. Respondent is unable to say more respecting the difficulties about the alley ways or the fee, as respondent has had little intercourse with Mr. Campbell since the estrangement that arose between them as before stated. The notes for the fee of Mr. Sargent were endorsed by James Campbell, as respondent is advised and believes. They were paid, as respondent is informed and believes, from proceeds of the property; and were paid, he believes, by Cleveland or by Collins, and Cleveland acting under the power hereinafter mentioned. The parties were desirous of clearing the property of all charges, and of selling and improving. James Campbell and Cleveland were selected in view of their interest in the property, their means, credit, and business capacity, to attend to these matters; and in furtherance of these objects, as respondent supposes, the power of attorney, marked E in complainant's bill, was made.

Respondent, however, did not know of the execution of said power until long after the execution of a second power hereinafter set forth and exhibited, and respecting which complainant preserves a studied silence in the bill.

Complainant left for Texas not long after the sixteenth July, eighteen hundred and fifty-one, but at what time respondent does not remember. He returned in a short time to Mobile, and continued to give his interest in the property an active attention.

By twentieth December, 1851, the parties had digested and arranged among themselves that large sales should be made, large improvements made, and for that purpose money should be borrowed. Much filling up of land was to be done; Cleveland had much experience in attending to the improvement of property; Collins had but little, and it was supposed that through James Campbell the borrowing of money might be greatly facilitated. After the matter was fully digested it was arranged that respondent and James Campbell should execute to complainant and James Campbell a power of attorney provided in substance as shown by the agreement mentioned and exhibited, which power was accepted, was executed on twentieth December, eighteen hundred and fifty-one, and was ratified by them. This power by Primrose was acted on as hereafter shown, and was as respondent is advised and believes afterwards taken sole possession of by complainant, and in view of this litigation has by him been suppressed. At the same time Collins and Cleveland entered into an agreement reciting that complainant, respondent, Cleveland and James Campbell, were jointly interested in the property now in controversy in this suit, and were desirous of improving portions of the same (therein mentioned), and were desirous of providing for the payment of all debts and incumbrances on any of the property, and had agreed that Collins and Cleveland should be appointed to act and carry out the wishes and intentions of the parties for their joint interest and benefits,

and for this purpose Thompson and James Campbell had executed their power of an even date of said agreement to said Collins and Cleveland authorizing them to execute any mortgage, to give any lien or incumbrance on the lot so intended to be built upon, and also to fill certain lots in said power, and also to collect all rents that might accrue from all the property so held together. The agreement provided that Collins and Cleveland undertook to carry out and effect the intentions of the parties and the object of the power, that they would have the buildings erected and completed as soon as the circumstances of the case would admit, and bound themselves to use care and diligence in renting out said property, and the collection of all the rents accruing therefor, and that they would apply all moneys which they might raise by virtue of any mortgage or lien on said property to the erection of the buildings on the same, and that they would faithfully apply all collections of money or notes, or other payments and receipts from the rents of all the property mentioned to the extinguishment and payment of any and all debts created by the erection of said buildings, and to the satisfaction and payment of any mortgage or lien which may be given on said property to raise the means to build, and that in the event of effecting and making sale of either or both parcels of land mentioned in said power, they would faithfully apply the proceeds to the payment, liquidation and settlement of incumbrances then existing on parts of the property so held together, and to the payment of notes or other debts due by either or all of the parties on account of the suit in which the property was recovered, and they covenanted and agreed that they, Collins and Cleveland, would exercise their best judgment in the exercise of the powers, and in effecting the intention of the parties for the benefit and interest of all concerned, so that neither party should be injured in his interest, and they bound themselves to keep and exhibit regular and fair accounts, and to render the same when required, a copy of which agreement is hereto appended and made part of this answer marked "H." This agreement was executed to respondent and Campbell, and was delivered to and retained by respondent. It has in some way unknown to respondent gone from his possession. Respondent, about the time he heard complainant was speaking of this litigation, looked for the paper, and it was gone. Respondent says that this power and agreement were made more than ten months after the deed he seeks to set aside, more than five months after the deed by the executors of Kennedy to him, long after he was in possession of the property, long after he had in the fullest manner become acquainted with the property and the whole history of the suit. Under said power complainant has acted, and has continued to act, until very large and expensive improvements were made, and large sales effected, leases made, and until he had reaped the benefits of the power, and until larger engagements were undertaken for the benefit of the estate, then he seeks to annul his acts,

to repay those who have taken him from sickness and poverty, and raised him to wealth he never hoped for, who have employed their time, spent their money, exerted their energies to these ends, with a bill to set aside an adjustment which he considered at the time very liberal. Respondent says that before the execution of the power complainant recognized and confirmed the rights of respondent and his co-defendants distinctly and solemnly by his deed, by getting James Campbell to unite with him in notes to Mr. Sargent for his fees, and by uniting with respondent, Cleveland and James Campbell, in mortgages to Campbell and Chandler to secure their fees. After the execution of and under the power, he and Cleveland (he remaining in Mobile, except during a temporary absence to Ohio, and constantly participating in the acts), on the twenty-first of March, eighteen hundred and fifty-two, and sold, and (Collins) conveyed a portion of the estate to James, Samuel and John Battle, for twenty-five thousand dollars, and received the money, and he procured Cleveland, respondent and James Campbell, to enter their ratification upon the deed. On the first of April, eighteen hundred and fifty-two, they sold, and Collins conveyed with like ratifications another portion of the estate to Jacob Mayer for fifteen thousand dollars, taking notes and mortgages therefor. In March, eighteen hundred and fifty-two, ten thousand dollars was borrowed of William Jones, Jr., and the notes of said Collins payable first of April, eighteen hundred and fifty-three; eighteen hundred and fifty-four; eighteen hundred and fifty-five; eighteen hundred and fifty-six; eighteen hundred and fifty seven; given with the endorsement of James Campbell, and a mortgage on a part of the property by said Collins, Cleveland, Campbell and respondent. The money went into the hands of said Collins and Cleveland under the power, and to be expended on the improvements therein provided to be made. In June, eighteen hundred and fifty-two, said Cleveland and Collins sold, and said Collins conveyed, the parties ratifying as before another portion of said estate to C. W. Dorrana and others for ten thousand dollars, the parties taking a mortgage to complainant, respondent and Cleveland, and Campbell, to secure the purchase money, except the cash payment of two thousand dollars made by the vendees. In March, eighteen hundred and fifty-three, in the same manner another portion of said estate was sold, and conveyed, and ratified to Robert W. Smith for eight thousand five hundred dollars, or nine thousand dollars, the latter being the consideration inserted in the deed, of which three thousand five hundred dollars were paid in cash, and mortgage taken to secure the balance to complainant and defendants to the bill. In April, eighteen hundred and fifty-three, in the same manner another portion of said estate was sold and conveyed to Thomas T. Bolling for fifteen thousand dollars, five thousand dollars in cash, the balance secured by mortgage on the estate sold. All these sales have been made, and securities taken under and by virtue of, and in execution of the

said power and agreement, and in the same manner all the money for the sales to Battles, to Dorrance, and to Smith, and a large portion of the sales to the others have been received by the said Collins and Cleveland. With the large sums thus raised, said Collins and Cleveland under the power and agreement, and in execution of it, have built large, costly and valuable stores on Commerce Street upon the property recovered, which cost between thirty-five and forty thousand dollars, and during a long time while the same were building, constantly and day by day making contracts, buying materials and improving the building, and have since year by year made leases of the same, taken notes therefor, and collected and held the moneys from the tenants, all under and by virtue of said power. In accordance with the joint rights of the parties, and in acknowledgment thereof, portions of the property have been filled up, large and valuable wharves on it, which have been leased on joint account, and the rent money so received and held, and complainant and Cleveland have supervised, controlled, contracted for, and managed said property under and by virtue of the power, and in continual recognition of the trusts under which they were acting. While these matters were going on, said Collins and Cleveland were giving the business their almost undivided attention (aided by the attention and advice of James Campbell) they kept an office for said purposes, opened books, which said Collins chiefly kept, and which respondent is advised he has seized and appropriated to himself. Respondent denies that the sales of property were the first evidence of the great value of the estate, and refers to the intervals between the sales, each of which were an assent to, and recognition of the rights of defendants, and to the amounts of the first sales to show how lame, impotent and untrue are the pretences of the bill in this respect.

Respondent refers also to that part of complainant's bill in reference to making St. Anthony Street the line, to show how keen a sense he had of the value of the property at that time. During the progress of the suit complainant had examined the tax assessor's books on which the property was assessed at great sums, as will appear by the evidence taken in that cause.

The great present and prospective value of the property, and the small sums paid for it by Kennedy, were prominent and distinct features in the suit for the property, and respondent repeats that complainant made himself active in said suit, looked up testimony, attended the examination of witnesses, attended the argument, read the brief of Mr. Campbell in the Supreme Court. He particularly interested himself in looking up the assessments made of the property. Before the decree of April, eighteen hundred and fifty-one, respondent and complainant were solicitous not to compromise and settle the matter of the account but to have it taken. Mr. John A. Campbell was accusing them of being greedy, and of entertaining exaggerated views of the result of the account, and was urging

moral considerations towards the Kennedys, which he thought ought to make the parties lenient. This idea respondent and complainant sought to controvert, and in doing this they made and submitted to Mr. Campbell a statement of their views of the matter signed by said Collins. It is dated twenty-fifth February, eighteen hundred and fifty-one, and respondent hereto appends a copy marked I, and makes it a part of this answer.

It was prepared after a long and laborious inquiry by complainant and respondent into the value of the property, rents, &c. It is a stamp under Collins' own hand of the falsehood of these statements and allegations in the bill, which set out in such bold relief the pretended ignorance of the complainant of the value of the estate. It will appear by said statement that complainant in it asserts that the Collins property was worth two hundred thousand dollars.

Mr. Campbell, when this estimate was presented to him, dashed his pen through the four items which appear erased by the exhibit. The building contracts and leases were made in the name of Collins and Cleveland, and under and in ratification of said power. Respondent denies that he sought any further deed than that of February, 1851.

Primrose frequently expressed a desire to have some other or different conveyance, and respondent steadily replied that he wanted none. Respondent knows nothing of complainant having consulted Mr. Chandler, nor what, if any, advice he received; but is informed and believes that when he first proposed to consult Mr. Chandler, with a view of adopting a course adverse to the defendants, he (Mr. Chandler) peremptorily declined to be employed or to give advice.

Respondent says that leases of the property by complainant and Cleveland, under the power, had been made long before April, 1853; and he is advised and believes that the firm of Chandler, Smith & Herndon was not in contemplation until April, eighteen hundred and fifty-three, and that Messrs. Smith and Herndon of this firm formed the acquaintance of Mr. Chandler in April, eighteen hundred and fifty-three. Respondent knows nothing of any letter from complainant to Mr. Campbell. The only exposure of a confidential letter that he knows of, is complainant's appending respondent's letter to his bill. Respondent knows of nothing having been said to complainant about matters in the way of a quiet possession of the property, nothing having been said about Primrose being able to ruin the title, nor of danger of debts of complainant's brother George. Primrose talked to respondent about these things, and respondent spoke of them to complainant as humbugs, and in doing so, spoke of Primrose as a man full of schemes and projects of suits. Complainant expressed to respondent an apprehension that his brother might not be dead, and wished to know if it should turn out that he was not, whether respondent would share with him the loss of his brother's portion, and respondent told him he would.

Respondent heard some rumor of danger from the Lewis Baudain

grant, and looked into it; became satisfied that there was no danger, and so told Collins. Respondent never said to complainant anything tending to create an apprehension of personal danger to complainant from Primrose. He knows nothing of what others may have done, nor of the effect on complainant. He believes Mr. Primrose and complainant are very friendly, and especially in getting up and carrying on this suit. Respondent had no agency or knowledge of the drawing or presentation of any instrument for the purpose of obtaining a confirmation of defendant's claims to the property; never saw or heard of any such paper until he heard Primrose refer to some such matter, in eighteen hundred and fifty-four. As respondent understood it, it was a paper drawn in reference to the apprehension of Collins that his brother might be alive and obtain a part of the property, and was intended to secure Collins against entirely responding to such loss, and to bind each party to loss by failure of title in proportion to the interest of each, and a pledge of each one's interest to that effect.

Respondent knows nothing about an attempt to frighten complainant into any compliance, nor of any threats of loss of the property, nor anything about Collins' father being an alien, nor of the property escheating, except that he heard Primrose speaking of these things, and treated and spoke of them as among his humbugs. He knows nothing of the pretended threats, statements, or remarks by Cleveland.

This respondent, answering the separate charges of the bill, says:—

1. That as early as 1842, he, Cleveland, and Primrose had agreed to purchase the title of the heirs of complainant's father to the real estate as before set forth in this answer. There was no combination to obtain it by circumvention or unfair practices; but to obtain it on terms that no one else would give, and which, in view of the long, protracted, expensive, and doubtful suit necessary to be gone through for its recovery, respondent thinks were fair.

2. It is entirely untrue that their action was in any wise based on the opinion of Messrs. Campbell and Chandler, or either of them. Respondent had taken no one's opinion. He does not know what Primrose may have done. As before answered, Mr. Campbell, to whom alone respondent applied, was never consulted until respondent's return from Texas, and then seemed disinclined to give an opinion, and pursued a course that respondent deemed unusual in him, demanded as a condition precedent the payment of one thousand dollars in gold.

3. Respondent does not remember to have consulted William J. Vandegraff, Esq., on any matter, nor did he ever authorize any one to consult him, or know of his having been consulted. He thinks he has not to this day read the testimony of Samuel Kitchen; certainly he had not until long after his return from Texas. He heard from Primrose that Kitchen's testimony in the case spoken of in

the bill, tended to show fraud in Joshua Kennedy's title to the property involved in this bill.

4. It is untrue that Campbell and Chandler were employed previous to respondent's visit to Texas, in January, eighteen hundred and forty-four, to advise, or that they did advise anything respecting any course to be pursued, or to bring any suit respecting the matter complained of in the bill.

5. Respondent had other business in Texas; but the main object of his visit was to find out complainant, and to buy his titles to lands, especially to the land in controversy in this case, and his rights in the Dubroca track; and to obtain, on so doing, his irrevocable power of attorney, to enable respondent and those interested with him (as before set forth) to manage the same exclusively, but not to their sole advantage, but to the advantage of themselves and complainant, he having by the contract then entered into a large contingent interest. Respondent took this power in order that respondent might not, after respondent should enter on the matter, and spend his time and money in it, be frustrated by compromises and arrangements between complainant and the heirs of Kennedy.

6. In the interview in Texas respondent was acting under the advice of no one. Respondent thinks that some of the papers taken in Texas, in January, eighteen hundred and forty-four, were framed from forms in Mr. Campbell's handwriting, which respondent had; but respondent's recollection and belief is that they were not given by Mr. Campbell with any expectation of being used in said matter, and respondent does not know that Mr. Campbell was apprised of any such intended visit or object of respondent. Persons in Mobile frequently obtained and kept forms from Mr. Campbell to draw papers by. Respondent was among the number. He has endeavored to remember how he came to have such forms; but is unable to recollect when, why, or for what purpose he got them. All he can remember on this subject is, that one or more of the papers were framed from forms which were in Mr. Campbell's handwriting.

7. Respondent did not state that Kennedy or his heirs or devisees were trying to extend the Dubroca tract over his residence. He has before fully answered as to the statements in this regard. His residence was nearly a mile west of the west line of the Dubroca tract, and he made no statement to the contrary.

8. It is not true that there was any understanding to which respondent was party or privy, or of which he had or has any knowledge that complainant was to be kept in ignorance of the suit. Mr. John A. Campbell gave no such advice. On the contrary, he would not undertake the case, except on the express understanding that complainant should have a substantial interest in the matter. Mr. Campbell was, from his first connection with the suit, anxious that complainant should actively participate in it.

Respondent took no steps to conceal complainant's residence from the defendants to the suit. He was desirous that they should not know his residence, lest they might induce him to dismiss the suit, or might entrap him into some admissions prejudicial to it.

9. When respondent saw that complainant was named in the bill as a citizen of Missouri he was surprised, and went to Primrose to know why it was done. Primrose explained that he had been residing at a place supposed to be in Missouri prior to his removal to Texas, which was then a foreign State, or that he was about to remove there, respondent does not remember which; and that it was better for Missouri to be stated as his residence in the bill, in order that the defendants might not have a clue whereby they should find him out, and have an opportunity of buying him off, or entrapping him.

10. Respondent says he made no such pretences about the mode of bringing the suit as are alleged in the bill. The papers first executed by complainant show that suit was contemplated in his name. The fact is that respondent had nothing to do with the suit being brought in complainant's name. It was a matter left entirely with Mr. John A. Campbell.

He brought the suit in the name of complainant on his own view of what was proper as a matter of law. Respondent did not know in whose name the suit would have to be brought, or should have been brought.

11th. It is true that James Campbell was not an original party to the purchase with respondent. It soon became apparent that the suit involved liabilities and required outlays that respondent, Cleveland and Primrose could with difficulty meet. Some time after the filing of the bill Primrose and Cleveland suggested that they and respondent had better let James Campbell participate with them in the matter, that if it failed, the loss would fall lighter on the parties, and that Campbell could and would advance the money necessary to carry on the suit. That he could be of service in the cause.

Respondent seriously objected to this proposal, but finally yielded to the importunity (chiefly of Primrose, who hoped by it to make some ulterior advantage to himself by getting money to buy up old debts that were hanging over him) about December, eighteen hundred and forty-four.

Respondent and Primrose agreed with Cleveland that his interest should be equal to both of theirs, he agreeing to divide his share with James Campbell, who was absent, as respondent is advised and informed, in Scotland, and undertaking that James Campbell would advance funds to carry on the suit; all this was fully explained to complainant. Very shortly, not more than a day or two after the adjustment and deed of February, eighteen hundred and fifty one, complainant himself brought the agreement providing for this arrangement to respondent, and respondent burned it after he and

complainant read it over each for himself, when complainant handed the paper to respondent, he said, "Let me read it again!" Through James Campbell and by his means, credit and acquaintance with the value of property in Mobile, and the best mode of improving it, the parties interested were greatly aided in paying off the burthens and charges of the suit in filling up, improving and bringing the property into market. In all these matters he gave valuable aid. Respondent thinks he or some such person was essential to the management and improvement of the estate with the success that has attended it.

12. Respondent left home in December, eighteen hundred and forty-four, with his sick wife, and took her with him to the house of a friend residing near Velasco, in Texas, intending when he left home to visit complainant if possible before his return to Mobile, with a view of informing him fully of the suit, its prospects, and of the probability of success, and of the probability that the defendants might offer a compromise, and to put him on his guard against accepting it, and after leaving his wife at the house of his friend, he proceeded to complainant's house. Respondent informed complainant at this visit of the existence of the suit, that he was to have a substantial share of the property if recovered, that there was a strong probability of success. Respondent's object was to impress upon complainant the fact that it would not be to his interest to accept offers that might be made him, and to protect complainant against imposition. He had no other object in visiting complainant. He was not hurried off, nor did he hurry off. He did wish to anticipate any messenger from the Kennedys. He had heard a rumor that they would probably send one. Respondent says that his representations to complainant made complainant so sanguine that he informed the messenger of the Kennedys (as complainant told respondent), to say to Mr. Aikin, the husband of one of the daughters of Joshua Kennedy, deceased, and a lawyer who was prominent in the defence of the suit, that "when he could dance to the tune of one hundred thousand dollars he might begin to make offers of a compromise, and he (Collins) would refer them to his attorney, Messrs. Campbell and Chandler, of Mobile."

13. Respondent made no representations of the object of his visit to complainant other than he has set forth above in the twelfth paragraph. He did not refer to it as secondary or accidental. He made no statements or representations that were untrue. He made no statements of the law of descents other than to inform complainant of his ignorance as to whether the laws of Spain or Alabama would govern as before answered. The pretence in the bill that respondent wished to prevent complainant from accepting offers of compromise, and that in accomplishing this object he sought to underrate the rights of complainant, appear to respondent to be palpable contradictions. The charge in the bill is in effect, that to prevent complainant from yielding to offers of com-

promise, respondent induced him to believe that his rights were worth but little! It is apparent from the thirteenth special charge in the bill that complainant at least in January, eighteen hundred and forty-five, distinctly understood that he was not held to his previous deed and contract, but that he had and regarded himself as having a substantial interest in the property involved in the suit.

14. The visit of complainant to Mobile with Col. Platt was sooner than respondent expected him, and this was unexpected. It was exceedingly welcome. Respondent was greatly pleased at his coming, and prevailed on him to remain some time, and to take an active interest in the suit. There had been an attempt to prejudice the suit by representing that he had no stake or concern in it, and respondent wished him to give a practical refutation of the charge. Respondent does not remember having had any understanding that Primrose should not converse with Collins about the suit. He thought Primrose a very indiscreet man, and an unwise counsellor, and did not wish him to direct the suit. He may have advised Primrose not to interfere or advise. There was no understanding or attempt to dissuade complainant from making inquiries of any one about the suit or estate. Respondent does not remember having spoken disparagingly of Primrose to complainant further than as he has before answered. He cautioned complainant to be on his guard against being entrapped into remarks or admissions that might be used to the injury of the suit, and from talking too much about the matters involved in it. Further than this he made no effort to restrain him from conversing when and with whom he pleased about the suit.

15. The fifteenth special charge in the bill is a mere personal attack aimed at gentlemen not parties to the bill. Campbell and Chandler became the attorneys of those concerned. Complainant held respondent's bond to protect him against the fee. Campbell and Chandler ably, fairly and honorably discharged their duties, and did not sacrifice, but insisted on and maintained complainant's rights with a firm and steady hand whenever they came in conflict with those of the other parties.

16. Respondent made no statements of his advances or liabilities that were not true. He understated them.

17. Respondent supposes the seventeenth special charge in the bill intended as a mere insult to Honorable John A. Campbell. He has before stated all he knows about the alley ways. He believes the charge and insinuation of the bill to be utterly false, and so known to be by complainant who made it, and the solicitor who drew it. Respondent knows nothing of any agreement obtained from complainant in January, eighteen hundred and forty seven.

18. The meeting at the office of John A. Campbell in February, eighteen hundred and fifty-one, was not heard of by respondent until he was requested by complainant to attend it. No programme was prepared; no parts assigned; no decision known (none was

made); no influence relied on to carry into thing into effect. The whole charge is an unmitigated falsehood.

19. Mr. John A. Campbell made no statement that was untrue. Respondent has before answered as to what took place at the meeting. Mr. Campbell made no statement of the advances made. The several parties spoke each for himself, professing only to approximate to the sums. Respondent understood his own outlays and expenses. He does not believe there was any exaggeration of advances or services made.

20. Mr. John A. Campbell made no other statement in respect to the advances or services of any one, than that he supposed each had made advances and rendered services. It was introductory remark by way of predicate for his recommendation; his remark was true.

21. In the advice given by Mr. Campbell on this occasion he acted for the benefit of complainant particularly, so much so that Primrose expressed open dissatisfaction with Mr. Campbell's suggestion. Complainant was exceedingly pleased at the suggestion in reference to himself, and shortly after praised Mr. Campbell to respondent as the most wise and just man he had ever known. Complainant thought he had suggested too small a share for respondent, and offered to throw the two together and make an equal division.

22. The considerations recited in the deed of fifteenth February, eighteen hundred and fifty-one, existed, and were the true considerations on which it was made, except that respondent does not believe that the five dollars recited was actually paid. The land had been recovered, but the possession had not been surrendered. The deed was not obtained by any misrepresentations, concealments of truth, or undue influence. It was not made in ignorance, mistake, or implicit confidence of complainant in any one. It has been again and again ratified by complainant, as before shown in this answer.

23. Respondent never executed the deed of nineteenth July, eighteen hundred and fifty-one, to the alley ways. Mr. Campbell claimed them by dedication. Respondent knew nothing of the right. He does not doubt but that Mr. Campbell thought there was a legal or equitable right to them. Mr. Campbell had but a small if any interest in the matter, as respondent is advised and believes; and respondent does not believe there is any ground for impeachment of Mr. Campbell's integrity on account of the alley ways. He had declined to accept any fee for arguing the case in the Supreme Court of the United States beyond his actual expenses, and respondent does not believe that any man acquainted with the worth and character of Mr. Campbell would treat the accusations of the bill respecting the alley ways as entitled to consideration.

24. Respondent knows nothing about the right to the alley ways, nor whether the deed of Kennedy to the lot itself was the only and

entire contract he made with the vendees on the subject of the lot, nor what Kennedy sold the lot for further than appeared on the face of the deed, nor what was at the time its value. So far as respondent's advice or example extended, it went to dissuade complainant from surrendering the right to the alley ways.

25. Respondent knows nothing of Exhibit H to complainant's bill. He supposes complainant himself had the paper drawn. Respondent has made no attempt, made no misrepresentations, exerted no influence, used no threats to induce complainant to make any deed, or to obtain any confirmation of the deed of February 15th, eighteen hundred and fifty-one.

26. Respondent knows nothing whatever of the bond mentioned in the twenty-sixth paragraph of the special charges in the bill. He never saw it, does not know whether it entered into any settlement of the suit. If it did respondent supposes it must have been done by complainant himself, as he states in his bill that he accomplished the final settlement with Kennedy's executors.

27. The twenty-seventh special charge in the bill is false, and the complainant knows it to be so.

28. Respondent has never pretended or supposed that the agreement and deeds were void. He has at all times been satisfied with the final adjustment and deed of fifteenth February, 1851, as a fair and final adjustment of the rights of the parties. Complainant has of his own accord, with full knowledge of his rights, and the of the case, and under the influence of no practices assented to, ratified, acknowledged and confirmed the rights secured by said deed. It is untrue that either the settlement of the attorney's fees, or the fees of either of them, or the building contracts or leases were prepared for the intent of affording evidence of confirmation of the deed of February fifteenth, eighteen hundred and fifty-one. They were, so far as respondent knows or believes, plain, straightforward transactions, intended to accomplish the wishes and intentions of all parties, and designed for no other purpose.

29. The moneys necessarily advanced in the prosecution of the suit largely exceeded fifteen hundred dollars. Respondent, besides having advanced more than a thousand dollars to complainant during the progress of the suit for his own use, and to bear his expenses while attending on it, visiting Mobile, &c., paid in and about the necessary prosecution of the suit several hundred dollars, but the amount of which respondent is unable to state with accuracy.

30. Before the commencement of the suit respondent received from Cleveland and paid to John A. Campbell one thousand dollars in gold. This was paid Mr. Campbell to look into and give an opinion on the case. He refused to look into the matter at all until it was so paid, and complainant was informed by respondent of this requirement, and the payment of that sum of money for that purpose in eighteen hundred and forty-five, and repeatedly since. James Campbell at the time of the payment had nothing to do with

the matter directly or indirectly, and it is untrue that said sum was paid in any such manner, or for any such purpose as is charged in the 30th special charge in the bill.

31. Respondent says that complainant and Cleveland were appointed attorneys in fact by letter of attorney to manage, improve, &c., the property as before answered, under which they have sold parts of the same, leased and improved, and built on the property, and collected the proceeds of sales, and the money from the tenants as before answered. Complainant and Cleveland had and kept the books of their transactions under the power of attorney. Respondent is informed and believes, and states the fact to be that complainant has taken and keeps, and has the books and vouchers showing these matters, and withholds them, and refuses to account. That in eighteen hundred and fifty-four, Cleveland met the complainant at the office of Primrose, respondent being present, and Cleveland stated to complainant that he had understood he was about to make a trip to Texas and had spoken of suits about the property, that he wished him and Cleveland to settle up their accounts between the parties so far as they had gone before complainant left for Texas. That he, complainant, had with him, Cleveland, executed a trust and agreement with the parties, that they had gone on and acted under the power, and that he, Cleveland, could not settle it alone, that they had both assumed to execute the trust, and had agreed to settle up whenever called on to do so, and that complainant must settle before he left. The reply of complainant was: "Do you say must to me? Then I will not go, but will give it up for the present, and stay and get the accounts closed, although it will be a disappointment to me." Upon which respondent proposed to Mr. Collins and Mr. Cleveland, that as he, Collins (the complainant), was then ready to go, and had made arrangements to do so, that complainant had better go on now and on his return they could get together and make up their statements and settle up their accounts. Mr. Cleveland stated that if respondent said go, under the circumstances, and Mr. Collins would say that he would make up the accounts on his return, he, Cleveland, would interpose no further objection; to all of which complainant assented and agreed, as also did respondent and Mr. Primrose, and complainant proceeded on his vist to Texas. Some time after the return of complainant from his visit to Texas, respondent reminded him of the understanding when he left for Texas, and proposed to him that he should go to work and make out the account and close the matter up, respondent offering to aid him, to which complainant assented, and in accordance with it, complainant produced the book and vouchers which they had kept, and respondent proceeded to draw off the statement from the books, aided and assisted by complainant. Respondent endeavored on several occasions to get Cleveland to come to the office of Primrose to explain items, and to go on with Collins and close the account, telling him that difficulties existed in the entries and books to prevent him from fully going through

with the accounts without his aid. Mr. Cleveland refused to go to the office of Mr. Primrose, but proposed that he would get a room and they would go on with it. This was not accomplished, and as respondent had made an engagement to enter on the duties of a business which required him to be absent from the city, he told complainant and Cleveland that he could not longer delay with them, but that they could get together, go on and get it closed, and received promises from each of them that they would get together, go on and close the accounts, and settle up the matter. All this occurred in the month of December, eighteen hundred and fifty-four, and under this understanding, on or about the 17th of that month, respondent left with complainant all the books and vouchers which had been exhibited to him, as well as the statement of the account drawn by respondent while thus aided by complainant. Said Cleveland and Collins have paid to this respondent and for him only the sum of between forty-two and forty-five hundred dollars, the precise amount he cannot give. Respondent does not know what sums have been received by others from the rents of the estate, nor does he know it has been applied. Respondent has been continually urging the payment of the debts and the settlement of the matter. He is informed and believes that large payments have been made from sales and rents towards the debts. Respondent denies that he is misapplying the income, or that he, or any one else so far as he knows or believes, is stimulating the mortgagors to proceed and foreclose the mortgages on the property. Complainant is endeavoring, as respondent is advised and believes, to get all the money he can from the estate, to pay but little towards the debts, and to appropriate the whole to himself in the face of his undertaking and trust, and in violation of his promises made as before answered and set forth.

32. Respondent does not know the annual rent of the estate, nor what has been done respecting this year ending on the first of November, eighteen hundred and fifty-six. He is informed and believes the fact to be that complainant has notified his co-attorney Cleveland, that he will not longer act under the power, and that Cleveland must not lease longer in his name, or use his name in any way, and that Cleveland representing the interest of himself, James Campbell, Primrose and respondent has for this year rented their two-third interest and taken notes therefor, leaving complainant to do with his one-third interest as he chose.

33. Respondent is not accurately informed of the value of the unsold portion of said estate. He is not accurately acquainted with the value of real estate in Mobile. The estate is large and valuable, and has been constantly and rapidly increasing in value for several years past, owing to the fact that the city has been extending and growing in that direction. Respondent supposes it may be worth two hundred thousand dollars. Respondent thinks the consideration paid by himself and co-defendants was full and ample, and insists that this was a matter fully considered, fairly adjusted, and finally

settled by the deed of fifteenth February, 1851, and has since, and through a long period of time, *had* been assented to, ratified and confirmed by complainant. Respondent denies that complainant has ever offered any reasonable or just settlement with him, he had, however, nothing to compromise. His rights are fixed by contract, on that he stands and upon it he insists. Respondent appends copies of his agreements with Primrose and Cleveland, including that providing for James Campbell, marked J and K; he will produce the originals at the hearing. He entered into no others and knows of no others. Each was executed in three parts, the part of the latter which was held by Cleveland, was burned as before answered. After the understanding between respondent and John A. Campbell heretofore stated, respondent, without telling Primrose and Cleveland of it, stated to them in general terms that complainant was not to be held to his Texas agreement, but was to be liberally dealt by.

This was readily assented to by Cleveland; but Primrose reluctantly assented. From this time the rights of complainant were treated as open for a liberal adjustment, and the parties in making the subsequent agreement of the third of December, 1844, appended to the answer, without noticing in it the understanding as to complainant's rights, provided for a rule of division among themselves, and referred to in the prior contract. The simple object of the second agreement being to raise funds by letting James Campbell come in, respondent says that soon afterwards, and on the first interview had between James Campbell and himself, he informed James Campbell of the understanding between respondent, Cleveland, and Primrose, as to complainant's right, to which he readily assented.

Respondent says, that although for some reason which suited and moved William D. Primrose, and with which respondent had no concern, and felt no interest, the deed of the fifteenth of February, eighteen hundred and fifty-one, did not embrace Primrose as a party. Yet, the fact was that by the settlement said Primrose became equally interested with the defendants to complainant's bill in the two-thirds conveyed to them, and holds the title bond of defendants to this bill for said interest. This is a matter well known to complainant, and has been so known to him since the fifteenth day of February, 1851. And respondent insists that said Primrose is a necessary party defendant to this bill, and should be made such. And respondent having fully answered for plea, says that the deed of complainant of the fifteenth of February, 1851, exhibited to complainant's bill as Exhibit A, conveying to respondent, James Campbell, and William F. Cleveland, the undivided two-thirds part of the property sued for in complainant's bill, was made and delivered by complainant, and by the grantees received, upon the express understanding and trust that the same was equally for the use and benefit of Wm. D. Primrose (with the grantees to the deed). And that the estate so conveyed has ever since been so held; all of which since has been and is fully known by said Sidney E. Collins; that said Collins, so

knowing, along with William F. Cleveland, on 30th of December, 1851, accepted and for a long time acted under a power of attorney from said Thompson and Campbell to build on, sell, and mortgage the property, to collect rents, and to liquidate, settle, and pay off incumbrances on the property, or debts due on account of liabilities incurred for the recovery of the same; and at the same time, and for the purpose of more fully representing the interest of said Primrose as aforesaid, said Collins and Cleveland took and accepted from said Primrose an express written ratification of said power, reciting therein that he was interested in said property, under which power and ratification said Collins and said Cleveland have acted, and have done many of the acts therein provided for, and so representing the interest of said Primrose and acknowledging the same, have from time to time paid large sums of money to said Primrose, for and on account of his interest accruing from rents of the estate so held and now held by him; and so said Thompson says that said Primrose is a party interested in said suit, and the same was so known to complainant when he filed his bill, and said Primrose resides and is within the jurisdiction of this Court, and is amenable to its process, and is a necessary party defendant to said cause, and should so be made. CHANDLER, SMITH & HERNDON,

Att'ys for Drury Thompson.

THE STATE OF ALABAMA,
Mobile County.

Personally appeared before me, George E. Holt, Clerk of the Circuit Court of the United States, Southern District of Alabama, Drury Thompson, who is personally known to me, who, being duly sworn, says the foregoing answer to the bill of Sidney E. Collins is true in substance and fact, the matters and set forth of his own knowledge, he knows to be true, those upon information and belief he believes to be true. (Signed) DRURY THOMPSON.

Sworn to and subscribed before me, this the fourth day of March, A. D. 1856. GEO. E. HOLT, *Clerk.*

Exhibits to Thompson's Answer.

Exhibit A.

REPUBLIC OF TEXAS,
Liberty County.

Know all men by these presents, that we, Sidney E. Collins, and Louisa Rebecca Collins, wife of said Sidney E. Collins, of the County and Republic aforesaid, have, in consideration of ten thousand dollars to us in hand paid by Drury Thompson, of the County of Mobile, State of Alabama, granted, bargained, and sold, and do grant, bargain, and sell to said Drury Thompson, his heirs, executors, administrators, and assigns, all that piece or parcel of land and premises in the City of Mobile, State of Alabama, bounded east by the river Mobile, west by Royal street, north by lands formerly of Panton, Leslie & Co., south by St. Louis street, with all the privileges thereto.

Also that certain tract or parcel of land, commonly known as the Dubroca tract, situate in the County of Mobile, on three mile Creek, bounded north by the three mile Creek, south by lands of said Thompson and others, west by the Murrell tract of land, east by the Espejo tract of land, with all the privileges thereto. To have and to hold the said tracts, pieces, and parcels of land, with their appurtenances, unto him, the said Drury Thompson, his heirs, executors, administrators, and assigns, forever.

Witness our hands and seals, this the thirteenth day of January, in the year of our Lord eighteen hundred and forty-four.

Witness, A. W. DISMUKE, SIDN. E. COLLINS, [SEAL.]
J. C. MARTIN. LOUISA R. COLLINS, [SEAL.]

Written across the face of said deed "cancelled, and new paper drawn." *Clerk.*

REPUBLIC OF TEXAS,
County of Liberty, ss:

Personally appeared before me, William C. Abbott, Mayor of the Corporation of the Town of Liberty, Sidney E. Collins, who acknowledged that he signed, sealed, and delivered the foregoing deed of conveyance on the day and year therein mentioned (to Drury Thompson), for the uses and purposes therein specified and set forth.

In testimony whereof, I have hereunto set my hand and private seal (having no public seal of office), this thirteenth day of January, A. D. 1844. W. C. ABBOTT, [SEAL.]
Mayor of Liberty.

REPUBLIC OF TEXAS,
County of Liberty.

Be it known that I, William C. Abbott, Mayor of the Corporation of Liberty, in the County of Liberty, Republic of Texas, examined Louisa R. Collins, wife of Sidney E. Collins, the grantor within named, separate and apart from her said husband, and that she acknowledged that she signed, sealed, and delivered the foregoing deed of conveyance of her own free will and consent, without any fear or compulsion of her husband, on the day and year therein set forth, and for the uses and purposes therein contained.

In testimony whereof, I have hereunto set my hand and private seal (there being no Corporation seal), this thirteenth day of January, A. D. 1844. W. C. ABBOTT, [SEAL.]
Mayor of Liberty.

REPUBLIC OF TEXAS,
County of Liberty.

This is to certify, that W. C. Abbott, whose name appears to the foregoing certificates, was and is Mayor of the Corporation of the Town of Liberty, and that said certificates are in due form of law, and that as such his acts and doings are entitled to due credit and faith.

In testimony whereof, I have hereunto set my hand and seal of the County Court at office, this thirteenth day of January, A. D. 1844.

[SEAL.] WM. B. DUNCAN, *C. C. L. C.*
Per H. Jackson, Dept.

CONSULATE OF THE U. STATES OF AMERICA,
At Galveston, Republic of Texas.

I, Arch'd M. Green, Consul of the United States of America, do hereby certify that the Hon. W. C. Abbott, before whom the foregoing acknowledgment was taken, was at the time Mayor of the Town of Liberty, and duly authorized to take acknowledgments, and that full faith and credit are due to his official acts as such. I further certify, that Wm. B. Duncan, whose signature, per H. Jackson, his dept., and official seal thereto annexed, are genuine, and that full faith and credit are due to his official acts.

In testimony whereof, I hereunto subscribe my name and affix the seal of my office at Galveston, the 17th day of January, in the year of our Lord one thousand eight hundred and forty-four, and of the Independence of the United States the sixty-eighth.

[SEAL.] A. M. GREEN,
U. S. Consul.

Exhibit B.

Collins and Wife to Thompson.

Bond.

REPUBLIC OF TEXAS,
Liberty County.

We, Sidney E. Collins, and Louisa R. Collins, his wife, acknowledge ourselves to be bound to Drury Thompson, of the City of Mobile, State of Alabama, in the sum of twenty-five thousand dollars. The condition of the foregoing obligation is such, that whereas Drury Thompson has purchased from us that certain piece of land, in the City of Mobile, State of Alabama, bounded east by the river Mobile, west by Royal street, north by lands formerly of Pauton, Leslie & Co., south by St. Louis street; also that tract of land, commonly known as the Dubroca tract, in Mobile County, State of Alabama, on the three mile Creek, bounded north by the three mile Creek, south by lands of said Thompson and others, west by the Murrell tract of land, east by the Espejo tract of land: We do hereby bind ourselves to make him conveyances of the same, adequate to the passing of our entire interest and estate in said land at this time, or any we may acquire in ten years from this date, at his request, and at his expense.

Now, if we shall fulfil the said conditions, then this obligation to be void, else to have full force and virtue.

In witness whereof, we have hereto set our hands and seals, this the thirteenth day of January, A. D. 1844.

A. W. DISMUKE, SIDN. E. COLLINS, [SEAL.
J. C. MARTIN. LOUISA R. COLLINS, [SEAL.]

REPUBLIC OF TEXAS,
County of Liberty, ss:

Personally appeared before me, William C. Abbot, Mayor of the Corporation of Liberty, Sidney E. Collins, who acknowledged that he signed, sealed, and delivered to Drury Thompson, on the day and year therein specified, the foregoing instrument, for the uses and purposes therein specified.

In testimony whereof, I have hereunto set my hand and private seal (there being no Corporation seal), this thirteenth day of January, A. D. 1844. W. C. ABBOTT, [SEAL.]
Mayor of Liberty.

REPUBLIC OF TEXAS,
County of Liberty.

Be it remembered, that I, William C. Abbott, Mayor of the Corporation of Liberty, in the County of Liberty, Republic of Texas, examined Louisa R. Collins, wife of Sidney E. Collins, the obligor within named, separate and apart from her said husband, and that she acknowledged that she signed, sealed, and delivered the foregoing instrument of her own free will and consent, and without any fear or compulsion from her said husband, on the day and year therein set forth, and for the uses and purposes therein specified.

In testimony whereof, I have hereunto set my hand and private seal (there being no Corporation seal), this thirteenth day of January, A. D. 1844. W. C. ABBOTT,
Mayor of Liberty.

REPUBLIC OF TEXAS,
County of Liberty.

This is to certify, that W. C. Abbott, whose name appears to the foregoing certificates, was at the time and is now acting Mayor of the Corporation of the Town of Liberty, and that said certificates are in due form of law, and that as such his acts and doings are entitled to due credit and faith.

In testimony whereof, I have hereunto set my hand of the County Court at office, this 13th day January, A. D. 1844.
[SEAL.] WM. B. DUNCAN, *C. C. L. C.*
Per H. Jackson, Dept.

Exhibit C.

REPUBLIC OF TEXAS,
Liberty County.

Know all men by these presents, that we, Sidney E. Collins, and Louisa Rebecca Collins, wife of said Sidney E. Collins, of the County of Liberty, Republic of Texas, have nominated, constituted, and appointed, and do hereby nominate, constitute, and appoint Drury Thompson, of the County of Mobile, and State of Alabama, in the United States of America, our true and lawful attorney in fact, and

do authorize him, or such other person as he may appoint, to convey and sell any lands to which we have any claim or title, in the United States of America. We do authorize and empower him to appoint one or more attorneys to act under him, the said Drury Thompson, and to institute in our names, and for his behalf, any suit or suits that may be necessary for the recovery of said lands, and to take all steps needful and proper for the full and complete prosecution of the same, and for that purpose he may, at his own charges, but in our names, sue out process of any kind or description, and employ all the means requisite to a valid execution of the same.

He may enter into bonds necessary to the successful management of such suits, and he may in our names and behalf receive the proceeds of any judgment or decree, and dispose of the same to his own use and benefit. This power is not to be considered as revoked by our death, or the death of either of us, but the same to be forever irrevocable.

The intent and meaning of the same being, that we have received an adequate consideration for all our rights and interest to all lands in the United States of America, and that this power of attorney is designed to enable the said Drury Thompson to recover the same for his own use. We do hereby invest our said attorney with all the power and authority that we or either of us possess, and authorize and empower him to do and perform any and all things whatsoever in the premises, that we or either of us could lawfully do or perform were we present in our own proper person or persons, hereby ratifying and confirming any and all things which our said attorney may do and perform in the premises.

In witness whereof, we have hereto set our hands and seals, this the thirteenth day of January, in the year of our Lord one thousand eight hundred and fifty-four.

A. W. DISMUKE, SIDN. E. COLLINS, [SEAL.]
J. C. MARTIN. LOUISA R. COLLINS, [SEAL.]

REPUBLIC OF TEXAS,
County of Liberty.

Personally appeared before me, William C. Abbott, Mayor of the Corporation of Liberty, Sidney E. Collins, who acknowledged that he signed, sealed, and delivered the foregoing instrument to Drury Thompson, on the day and year therein specified, and for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and private seal (there being no Corporation seal), this thirteenth day of January, A. D. 1844.

W. C. ABBOTT, [SEAL.]
Mayor of Liberty.

REPUBLIC OF TEXAS,
County of Liberty.

Be it known, that I, William C. Abbott, Mayor of the corporation

of Liberty, in the county of Liberty, Republic of Texas, examined Louisa R. Collins, separate and apart from her husband, and that she acknowledged that she signed, sealed, and delivered the foregoing instrument of her own free will and consent, without any fear or compulsion of her husband, on the day and year therein set forth, and for the uses and purposes therein specified.

In testimony whereof, I have hereunto set my hand and private seal (there being no corporation seal), this thirteenth day of January, A. D. 1844. W. C. ABBOTT, [SEAL.]
Mayor of Liberty.

REPUBLIC OF TEXAS,
County of Liberty.

This is to certify that William C. Abbott, whose name appears to the foregoing certificates, was at the time and is now acting Mayor of the corporation of the town of Liberty, and that said certificates are in due form of law, and that, as such, his acts are entitled to due credit and faith.

In testimony whereof, I have hereunto set my hand and seal of the County Court of said county, at office, this thirteenth day of January, A. D. 1844. WM. B. DUNCAN, *C. C. L. C.*
[SEAL.] Per H. JACKSON, *Dep'y.*

CONSULATE OF THE UNITED STATES OF AMERICA AT GALVESTON.

I, Arch'd M. Green, Consul of the United States of America, do hereby certify that the Hon. Wm. C. Abbott, whose signature appears to the foregoing certificates, and before whom the foregoing acknowledgments were taken, was Mayor of the town of Liberty, in the county of Liberty, in this Republic, and that full faith and credit are due to his official acts, as such. I further certify that Wm. B. Duncan, clerk of said county, whose certificate and signature, per H. Jackson, deputy, under official seal thereto annexed, are entitled to full faith and credit.

In testimony whereof, I hereunto subscribe my name and affix the seal of my office, at Galveston, the 17th day of January, A. D. 1844, and of the Independence of the United States the 68th.
[SEAL.] A. M. GREEN, *U. S. Consul.*

Exhibit F.

It is agreed between the parties hereto, that the powers conferred by this letter of attorney have been reduced by articles of agreement entered into on the 13th January, 1849, and no powers conferred by this instrument are to be exercised by said Thompson, inconsistent with the spirit and meaning of these articles. And it is further agreed, that in reference to other lands and interests of the said Sidney E. Collins, not specifically referred to in the said articles, the powers contained in this letter of attorney are to be limited in the

same manner as to the lands particularly mentioned in the said articles.

Witness our hands and seals, this 13th January, 1849.

SIDN. E. COLLINS. [SEAL.]
DRURY THOMPSON. [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that the above-named Sidney E. Collins and Drury Thompson appeared personally before me, William Brooks, Notary Public for said county, duly commissioned and sworn, and acknowledged that they signed, sealed, and delivered the foregoing instrument of writing on the day and year and for the uses and purposes therein mentioned.

Given under my hand and seal of office, this thirteenth day of January, A. D. 1849.

WILLIAM BROOKS,
[SEAL.] *Notary Public.*

Exhibit D.

REPUBLIC OF TEXAS,
Liberty County.

Articles of agreement entered into this thirteenth day of January, A. D. 1844, by and between Drury Thompson, of the State of Alabama, United States of America, and Sidney E. Collins, of the county of Liberty, and Republic of Texas. Now, this instrument witnesseth that whereas I, Sidney E. Collins aforesaid, have this day executed to the aforesaid Drury Thompson, for an adequate consideration, a power of attorney to sell all my lands in the United States of America, for the use and benefit of the said Drury Thompson, and have also executed a deed of conveyance of certain lands in the city of Mobile, said deed bearing even date with these presents.

Now, it is hereby mutually agreed and understood between the said Drury Thompson and the said Sidney E. Collins, that the said Drury Thompson is to pay all costs, charges, and expenses of every kind and description that may arise in any manner in regard to the said lands, and that said Sidney E. Collins is not to be held liable in any way whatever for any conveyances he has heretofore made to any one for the said lands, or for any power of attorney he, the said Sidney E. Collins, *he* may have heretofore made to any person or persons whatsoever, to dispose of the said lands in the United States of America. It being expressly agreed that the said Sidney E. Collins, his heirs, executors, administrators, or assigns, are not to be held liable by the said Drury Thompson, his heirs, executors, administrators, or assigns, in any way, for any papers that I, the said Sidney E. Collins, may have heretofore made to any one in regard to the said lands.

In witness whereof, we, the aforesaid Sidney E. Collins and Drury

Thompson, have hereunto set our hands and seals, on the day and year above written. DRURY THOMPSON. [SEAL.]
SIDN. E. COLLINS. [SEAL.]

In presence of A. W. DISMUKE.

Exhibit E.

Agreement.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that I, Sidney E. Collins, of the county of Jefferson, State of Texas, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, to Drury Thompson, of the city of Mobile, in the county of Mobile, State aforesaid, an undivided half of all the lands between St. Louis, St. Anthony, Royal Streets, and the river Mobile, in the city of Mobile, and also an undivided half of all my claim to any account from the executors and heirs of Joshua Kennedy, deceased; and I do hereby agree with the said Thompson to prosecute the suit now pending in the Supreme Court of the United States, which commenced by me in the Circuit Court of the United States for the Southern District of Alabama, against the heirs and executors of Joshua Kennedy, deceased, and others, to a final decree, and that in that decree the said Thompson shall be equally and jointly interested with me; and the said Collins and Thompson mutually agree that upon such final decree, or before that time, if the suit shall be otherwise disposed of, an account shall be taken between the said Collins and Thompson for all the costs, liabilities, and expenses of the litigation in relation to said lands and suit, and they shall be borne equally between the said parties; and the said parties further agree that the active management of the suit shall be subject to the control and directions of the said Thompson, as heretofore. The said Thompson, on his part, hereby discharges the said Collins from all agreements heretofore made to him in relation to said parcel of land, and releases to him all claims to the same, except those that are created and recognized in these articles, and hereby renounces all claims upon the said lands, and the proceeds of the said suit, except that which is hereby and herein secured to him.

In testimony of these presents, we have hereto set our hands and affixed our seals, and executed the same in duplicate, this thirteenth day of January, in the year of our Lord one thousand eight hundred and forty-nine. SIDN. E. COLLINS. [SEAL.]
DRURY THOMPSON. [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that the above-named Sidney E. Collins and Drury Thompson appeared personally before me, William Brooks, Notary Public for said county, duly commissioned and sworn, and

acknowledged that they signed, sealed, and delivered the foregoing instruments of writing on the day and year and for the uses and purposes therein mentioned.

Given under my hand and seal of office, this thirteenth day of January, A. D. 1849. WILLIAM BROOKS,

[SEAL.] *Notary Public.*

Exhibit G.

Deed.

THE STATE OF ALABAMA,
Mobile County.

Whereas I, Sidney E. Collins, of the county of Liberty, State of Texas, have commenced a suit in the Circuit Court of the United States for the Southern District of Alabama, against the heirs and representatives of Joshua Kennedy, deceased, for the Baudain Tract, bounded by the Mobile River, St. Louis Street, Royal Street, and a line equally dividing the Alexander Baudain Tract, and have obtained a recovery therefor, in the said Court, and which judgment has been affirmed in the Supreme Court of the United States; and whereas William F. Cleveland, James Campbell and Drury Thompson, have heretofore advanced me money, and have rendered me aid and assistance in the premises, whereby great benefits have accrued to me, and in consideration of five dollars to me in hands, paid by the said parties, the receipt of which I do hereby acknowledge, I hereby convey to the said parties the undivided two-third parts of all the lands embraced in the said recovery, and all the estate, right, title, claim and interest therein that I have, hold, possess and enjoy in the said lands, or that I may hereafter have, hold, possess and enjoy in the said lands; also the undivided two-thirds part of all the recovery I may make or obtain for all rents, profits, sales of land, or derive in any manner from the accounts to be taken in said suit. And it is hereby fully understood that the said party shall be fully interested in the two-thirds part of the said judgment. But on this condition, that they shall absolutely assume the two-thirds parts of all the fees, and expenses of said suit, and the costs and charges that have heretofore been made.

And should the defendants occasion further litigation, that the said parties shall pay two-thirds of the future expenses. In witness whereof I, the said Sidney E. Collins, have hereto set my hand and seal, this 15th February, 1851. It being further understood that I, the said Sidney E. Collins, do further covenant and agree for the considerations aforesaid, bind and obligate myself to obtain the relinquishment of dower of my wife, Louisa R. Collins, to the land and premises hereby conveyed to the said Drury Thompson, James Campbell and William F. Cleveland, their heirs and assigns forever.

As witness my hand and seal on the day and year above mentioned.

Executed in triplicate. SIDNEY E. COLLINS, [SEAL.]

Drury Thompson, James Campbell and William F. Cleveland, jointly and severally agree with the said Sidney E. Collins, to accept this agreement and conveyance on the terms stated therein, and hereby pledge to him and to one another their said interests for the fulfilment of the contract therein made, for the payment of the expenses, charges and costs of suit.

Witness our hands and seals this fifteenth day of February, eighteen hundred and fifty-one. (Executed in triplicate.)

DRURY THOMPSON, [L. S.]
WM. F. CLEVELAND, [L. S.]
JAMES CAMPBELL, [L. S.]

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that Sidney E. Collins, Drury Thompson, William F. Cleveland and James Campbell, appeared personally before me, William Brooks, a Notary Public for the county and State aforesaid, duly commissioned and qualified, and severally acknowledged that they signed, sealed and delivered the foregoing agreement or instrument of writing on the day and year, and for the uses and purposes therein mentioned.

Given under my hand and seal of office, this fifteenth day of February, A. D. 1851.

[L. S.] WILLIAM BROOKS, *Notary Public.*

Exhibit. H.
Agreement.

THE STATE OF ALABAMA,
Mobile County.

Whereas Sidney E. Collins, Drury Thompson, William F. Cleveland and James Campbell, are jointly interested in all the lands and improvements, situated in the city of Mobile, bounded south by St. Louis Street, north by St. Anthony Street, west by Royal Street, and east by the channel of the river Mobile, except the lot and building of Moses Waring and others on the corner of Water and St. Louis Streets, also the lot or parcel of land bounded north by State Street, east by the Shipper's Press property, south by St. Anthony Street, and west by Royal Street, and the said parties being desirous of improving that piece or parcel of land bounded north by St. Anthony, east by Front Street, south by St. Louis Street, and west by Commerce Street, by erecting thereon good substantial brick buildings, and desiring to provide for the payment of all debts and incumbrances on any of the property before mentioned, have agreed that Sidney E. Collins and William F. Cleveland, should be appointed to act, and carry out the wishes and intentions of the said parties for their joint interests and benefit. And for this purpose, the said James Campbell and Drury Thompson, have executed their power of attorney, bearing even date with

these presents, to the said Sidney E. Collins and William F. Cleveland, authorizing them to execute any mortgage, or give any lien or incumbrance on the lot so intended to be built upon, and also to sell certain lots mentioned in said power, and also to collect all rents that may accrue from all the property so held together, and to settle and pay off all incumbrances on any of the property so held together. Now the said Collins and Cleveland agree to undertake to carry out and effect the intentions of said parties, and the objects of said power, and that they will have the said building erected and completed as soon as the circumstances of the case will admit, hereby bind themselves to use diligence and care in the renting out said property, and the collection of all rents accruing thereon, and that they will apply all moneys which they may raise by virtue of any mortgage or lien on said property to the erections of the buildings on the same, and that they will faithfully apply all collections of money or notes, or other payments and receipts from the rents of all the property mentioned to the extinguishment and payment of any and all debts created by the erection of said buildings, and to the satisfaction and payment of any mortgage or lien which may be given on the said property to raise the means to build, and that in the event of effecting and making sale of either or both parcels of land mentioned in said power of attorney, they will faithfully apply the proceeds of such sale or sales to the payment, liquidation and settlement of the incumbrances now existing on parts of the property so held together, and to the payment of notes or other debts due by either or all of the parties on account of the suit in which said property was recovered, and they covenant and agree that they will use and exercise their best judgment in the exercise of said powers, and in effecting the intentions of said parties for the mutual benefit and interest of all concerned, so that neither party shall be injured in his interest, and they hereby bind themselves to keep regular and fair accounts of all receipts and disbursements for and on account of said property, and agree that they will at any and all times exhibit and render true accounts of the same to either or all of the parties whenever required, and it is hereby agreed and understood that the said powers shall cease, be annulled and revoked at any time when any two of said parties shall give notice in writing to the said Collins and Cleveland, that they desire that said powers shall cease, determine and be revoked, or whenever the building shall have been erected, and the debts thereby created extinguished, and all the debts and liabilities and incumbrances on any of the said property which now exist, or which may be created in the erection of said buildings, shall have been liquidated, settled and paid off.

In witness whereof, we the said Sidney E. Collins and William F. Cleveland have hereto affixed our hands and seals, this the 20th day of December, A. D. 1851, and executed in duplicate.

[SEAL.]

Without signatures. *Clerk*, [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

Before me, William Brooks, a Justice of the Peace in and for the county of Mobile, State aforesaid, personally came and appeared Sidney E. Collins and William F. Cleveland, who each severally acknowledged that they signed, sealed and delivered the foregoing instrument of writing to James Campbell and Drury Thompson, on the day and year therein set forth, and for the purposes therein mentioned.

Given under my hand and seal, this 22d day of December, A. D. 1851. (Without signature. *Clerk.*)

Exhibit I.

In order that you may understand the condition of the parties, I have given you statements of the value of the estate of Joshua Kennedy, in the city and county of Mobile; also statement of expenditures made by Kennedy on the property recovered, amounting, with interest, to the sum of $48,472 00. Also a statement of rents, &c., with interest on the property south of St. Anthony Street, amounting to $172,800 00. Also a statement of the amount received for sales and interest above St. Anthony Street, say $65,252 00. You will observe, that after deducting the expenditures, there remain a balance of $189,580 00.

These estimates can be relied upon in the total as correct. Variations in one way will be offset by variations in the other. You can take them as a basis to guide you, and when you receive their proposition I will consider it and consult and advise with you.

Respectfully, (Signed) S. E. COLLINS.

To Jno. A. Campbell, Esq., Feb'y 25, 1851.

City assessments, 1851,	$391,050
Deduct Collins' claim,	125,000
	$266,050
5000 acres of land in Mobile and Baldwin County,	100,000
	$366,050

These assessments are very low, and on vacant land not more than half the value, especially when you compare it with the Collins' claim, which is now worth $200,000. The estate, negroes, town property and county, can be placed safely at 450 or $500,000.

Actual cash rents received,		$90,202 60
Sales to Campbell and Cleveland, 1835,		10,000 00
		$100,202 60
Interest on rents,	$60,443 70	
Interest on sale to Campbell & Baldwin,	13,466 66	
	$73,910 36	

Improvements made.

Two stores South St. Anthony St., va. $4000,		$8,000 00
Interest on do. 16 years, $640,		9,240 00
Filling between Water and Commerce St.,		7,000 00
Interest on do. 16 years,		7,840 00
East of Commerce Street filled by Kinney on lease 6 years.		
Building wharf in 1827 (upper),		1,500 00
Interest on do. 23 years,		2,760 00
Rebuilding do. in 1832,		1,200 00
Interest on do. 18 years,		1,728 00
Rebuilding do. in 1837,		1,200 00
Interest on do. 13 years,		1,248 00
Rebuilding do. in 1842,		1,200 00
Interest on do. 8 years,		768 00
Wharf in 1839,		1,500 00
Interest on do. 11 years,		1,320 00
Rebuilding do. in 1844,		1,200 00
Interest on do. 6 years,		768 00
		$48,472 00

Rents and Profits.

Rent of stores from 1834, 16 years,		$12,800 00
Interest on do.,		5,120 00
Sale of lot to Campbell and Cleveland,		10,000 00
Interest 15 years,		12,000 00
Vacant lots and little shanties,		10,000 00
Interest on do.,		4,000 00
Lots and woodyard East Commerce, 5 years, $1,200,		6,000 00
Interest on do.,		1,200 00
Rents of upper wharf from 1827 to 1850 $2,000, 23 years,		46,000 00
Interest on do. (equated),		41,820 00
Rent of lower wharf, 11 years, $1,500,		16,500 00
Interest,		7,360 00
		$172,800 00

Rents and profits,	$172,800 00	
Improvements,	48,472 00	
	$124,328 00	
Purchases made by Campbell and Cleveland,		$30,000
Interest 15 years,		33,600
Purchase by do. in 1833 (700),		700
Interest,		952
		$65,252

Sale to Krebs and Chigazola.

Balance bro't down,	$124,328 00
Add,	65,252 00
Balance,	$189,580 00

Exhibit J.

Agreement.

STATE OF ALABAMA,
Mobile County.

This agreement, made and entered into at the city of Mobile, this 20th day of Nov., 1842, by and between Drury Thompson, W. F. Cleveland, and W. D. Primrose. Now, it is agreed and covenanted between the said parties that they will purchase the interest of the heirs of Joseph E. Collins, dec'd, to all the lands which said Collins was in any wise entitled to at the time of his death, viz., a piece of land bounded on the north by State Street, on the south side by St. Louis Street, on the west by Royal Street, and on the east by the river Mobile. All the said Collins' lands are described by a certain memorandum recorded in Jackson Co., State of Mississippi, as well as the records of Courts of the different States where the land lies, for a further description of the location and boundaries of said Collins' land. It is hereby agreed that the deeds shall be taken in the name of the said Drury Thompson, but for the express use, trust, and benefit of Drury Thompson, W. F. Cleveland, and W. D. Primrose, that is, one-third part each; and the expenses of purchasing the said lands, and prosecuting the suits in the name of the heirs of Collins, are in the name of Thompson, and all expenses incurred in the premises shall be equally divided between the aforesaid parties, and shall be satisfied from the proceeds of the lands.

In witness whereof we have set our hands and seals, on the day and year aforesaid.

(Signed) DRURY THOMPSON, [SEAL.]
W. F. CLEVELAND, [SEAL.]
WM. D. PRIMROSE, [SEAL.]

Exhibit K.

Agreement.

We agree that we shall be interested in the matters set forth in an agreement made and entered into between us, bearing date 20th day of November, 1842, relating to the interest of the heirs of Joseph E. Collins, deceased, in lands in the United States, in the following proportions or degrees, to wit, William F. Cleveland one-half interest, William D. Primrose one-fourth interest, and Drury Thompson one-fourth interest, under the like conditions, covenants, terms, &c., as stated therein, excepting that William F. Cleveland is to be charged with, and to bear and pay one-half of all and every liability and ex-

penditures, which have been incurred in the premises, or which may be incurred in the prosecution of the same, or any way touching the same, and that William D. Primrose and Drury Thompson are to be charged with, and bear and pay one-fourth of all such expenses incurred, or which may be incurred; and the said Cleveland, in consideration of this change in our former agreement hereby agrees and binds himself to advance all moneys which may be necessary to the securing and perfecting the titles to the lands referred to in said former agreement, and for the prosecution of suits for the recovery of the same; and further, that he will obtain from James Campbell an assignment or payment to the said Thompson for our joint use to appropriate in accordance to our proportionate interest, all moneys which the said Campbell or Cleveland may recover by virtue of the warranty deeds under which he holds, or either of them holds, a portion of said lands in the city of Mobile, either by compromise, or by due course of law, or otherwise, this change in our previous agreement to be null and void, and we shall then be confined to our first and former agreement, and controlled and governed by its terms and conditions.

Witness our hands and seals this 3d day of December, A. D. 1844. This signed in triplicate.

DRURY THOMPSON, [SEAL.]
W. F. CLEVELAND, [SEAL.]
WM. D. PRIMROSE, [SEAL.]

Filed March 10th, 1856.

GEO. E. HOLT, *Clerk.*

And afterwards, to wit, on the tenth day of March, A. D. 1856, the defendant, William F. Cleveland, filed his separate answer to the said bill of complaint in the words and figures following, to wit:—

Cleveland's Answer.

In Chancery.

The answer of William F. Cleveland to the bill of complaint of Sidney E. Collins, exhibited and pending in the Circuit Court of the United States of America, for the Fifth Judicial Circuit and Southern District of Alabama, against Drury Thompson, James Campbell, and respondent.

This respondent protesting against being called on to answer said bill otherwise than under oath, and answering under oath, says: It is true that a suit was instituted in the name of complainant, and against the heirs and executors of Joshua Kennedy, deceased, James Innerarity, Samuel and William Kitchen, James Campbell, and the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, as defendants. Campbell & Chandler, a law firm composed of John A. Campbell and Daniel Chandler, were the solicitors employed in prosecuting the suit, and who did prosecute it. Their names do appear of record as the solicitors.

The suit proceeded to the decrees stated in the bill. Respondent

does not know whether the decree of April, 1851, was entered with the knowledge or consent of complainant. Respondent is informed and believes it was entered against the wishes and protest of Drury Thompson, then acting on the part of complainant, said Thompson, James Campbell, William D. Primrose and respondent. This respondent is advised and believes that the decree was drawn by Hon. John A. Campbell. The bill was dismissed as to the bank and James Campbell, on the ground that they were *bona fide* purchasers for valuable consideration without notice. The decree left open and unadjusted the line of the tract by reason of a dispute and pending litigation between the Baudain and Orange Grove tracts, and of course it was important to have the line fixed and established upon the land; but respondent does not perceive how it could be done by a decree in the cause or otherwise than by negotiation or further suits. Respondent thinks a mathematical half of the Baudain tract would have divided streets and blocks diagonally to the injury of both parties.

The history of the decree of April, 1851, is this, so far as respondent knows or believes: After the recovery in the Supreme Court, the parties interested in its prosecution wished an account taken, and supposed it would give large results. Mr. John A. Campbell thought the views of the parties exaggerated, and charged them with being greedy, represented moral considerations why they should deal liberally with Kennedy's heirs, and finally became excited, and refused to carry out the wishes of the parties in this respect. A large fee, in addition to the one stipulated for, was offered him to go on with the account, with a view of enforcing a rigid settlement of rents, &c., with Kennedy's estate. He refused to do it on any terms, rejected all offers, and an alienation ensued. Thompson, Primrose, complainant and respondent, and he believes James Campbell, met and agreed to forego an account on both sides, to receive ten thousand dollars in money or property in lieu of demands for sales of a part of the property by Kennedy, and to take the property south of St. Anthony street as half of the Baudain tract. At this time it was supposed that this would be about the dividing line. Some one of the parties was instructed to inform Mr. John A. Campbell of this, that a decree might be entered accordingly; and respondent believes that to complainant was assigned the duty of informing Mr. Campbell. Respondent does not know what the instructions were, but Mr. Campbell seemed to understand them, and no doubt did understand them as meaning half the property mathematically, and under that direction arranged with defendants in the suit, and had the decree entered. Respondent has no doubt but that he acted honestly and from a sense of justice, and in pursuance of what he supposed to be the understanding of the parties. Mr. Campbell, from Delarges' and other maps in his possession, had fallen into the idea that half would about give to St. Anthony, and seemed to listen with impatience to the opposite view of the matter. While this mat-

ter was pending, respondent and Thompson measured the land accurately, ascertained that half would not give St. Anthony as the line, and resolved not to abide by the decree of April, 1851, which was entered about this time. Except as to making St. Anthony the line, the decree was such as was agreed to, and the simple matter of difference between the parties and Mr. Campbell was, that he understood it was to be half, thinking half would about come to St. Anthony. The parties wished the decree to name St. Anthony as the line. Mr. John A. Campbell, as respondent was informed, made some attempt subsequently to negotiate for St. Anthony as the line, but did not accomplish it. Respondent then took it up, entered into the negotiation, and advised complainant to go to Kennedy's executors and insist on it; he did so, and it was accomplished ostensibly by complainant, in fact by respondent.

The adjustment was as *respondent* (complainant) states in his bill, which, at December term, 1851, was confirmed by final decree. The history and facts in reference to respondent's bond, which is mentioned in the bill, are these: Respondent had purchased of Joshua Kennedy certain lands, taking Kennedy's deed, and respondent executing his bond to pay to Kennedy half the profits, for which he might sell the land. Respondent had performed his undertakings in the bond. In selling the land, respondent had warranted the titles, and the only value of the bond was as evidence to respondent, by which he might call on Kennedy's estate for contribution in the event of respondent being held liable on any of his deeds for the land. How this bond came to be taken up, or how it came to enter, if it did, into the settlement between the Kennedys and complainant, respondent does not know, but he believes the fact to be that it was introduced by Primrose to give color to his introducing into the settlement a requisite for the transfer for his own use and benefit of certain judgment or judgments Kennedy's estate had on said Primrose. Respondent conducted the negotiations for St. Anthony with Moses Waring and J. S. Secor, acting for the Kennedys, and never once introduced the bond into them when they were about being consummated. Primrose spoke to respondent about getting up the bond. Respondent refused to let the bond enter into the matter, and replied that respondent could take care of his own interest. So far as respondent knows, Kennedy's estate was making no claim on the bond. The first intimation that respondent had that it *has* been taken was by Mr. John A. Campbell handing it to respondent. During the summer after the execution and delivery of the deed from Kennedy's executors and heirs, complainant, aided by respondent and James Campbell, adjusted with some of the tenants their claims for improvements, and the parties were let into the possession. They, however, had possession of a large portion of the land before this, to wit, in the spring. Respondent says the following is an account of his connection with the purchase from complainant: Some time in 1842 or 1843, respondent ascertained that Thompson and Prim-

rose had resolved to purchase complainant's interest in the Baudain tract, and probably in other lands, and to bring one or more suits. Respondent found such suits would involve in controversy valuable lands, which respondent and James Campbell had bought from Kennedy, and the protection of these rights of respondent and Campbell constituted the chief inducement to respondent to enter into it. He agreed with Primrose and Thompson, that Thompson should purchase all the claims of the heirs of Joseph Collins, and sue for the land. Thompson was to take the conveyances in his name, and have the management of the suit or suits—the parties to be equally interested—and to share expenses. Thompson and Primrose went to Texas, and returned with complainant's deed and power of attorney. Respondent knows nothing of what transpired in Texas, but is informed and believes the fact to be that Thompson informed complainant that his father had owned valuable lands in Mobile; that he believed Kennedy had cheated his brother and himself out of them; that the conveyances could probably be set aside; that the rights of complainant were large and valuable; that he, Thompson, was willing to undertake a suit or suits for them, to bear the expenses, and, if a recovery could be had, to pay complainant ten thousand dollars. That complainant willingly yielded to the proposition, but required and took from Thompson a bond to protect him against cost and expenses. Respondent is informed and believes that the pretences of fraudulent representations by Thompson are untrue. Respondent has learned and believes it is true. Respondent's father was a deputy surveyor in Mobile under the Spanish government, and that he died about 1811, when complainant was of tender age, but of what age respondent is not advised, save by the bill.

It is true that for some time previous to 1830, complainant worked with a house-carpenter in Mobile, where he lived before; what was his education, or when he went from Mobile, respondent does not know, and is not advised save from the bill. Respondent does not know what schooling he had, but certain it is, that he is a shrewd, sagacious, intelligent man—one who is keenly alive to his interest, and cautious in guarding it. Respondent knows nothing of what complainant knew of his father's papers or affairs, nor what he knew about his father's will, or whether he knew anything about it.

Respondent is advised and believes that Thompson went to see complainant in Texas, in January, 1845; he does not know what said Thompson informed him, but respondent is *informed him, but respondent is* advised and believes said Thompson not only informed complainant that the suit was brought, but that a recovery was expected, that the interest was large, that the defendants to the bill would probably offer a compromise, and dissuaded him from accepting any offer that might be made.

Respondent is advised and believes that shortly after this Mr. Platt, of Mobile, representing the Kennedys, went to see complainant, and offered him a considerable sum to compromise the suit; that

he declined it, and came to Mobile with Platt. He knows nothing of the particulars of Platt's visit or offers. Respondent knows nothing of complainant's meeting Thompson at his office on his arrival, or of his introduction to Mr. John A. Campbell, or what if anything Thompson told him respecting Mr. Campbell, and is not advised, save by the bill. Certain it is that Mr. Campbell was a laborious, studious, retiring man, who did not suffer his time occupied by frequent interviews with clients or others, and who bore with impatience any interruption to his studies. His character was that of a man who would be sure to attend to his client's causes, but would suffer no unnecessary interruption. He was and is a man of high character and an eminent lawyer, and was regarded as the best lawyer in Mobile and in the State of Alabama.

Respondent does not know whether complainant received any advice respecting the compromising of the suit, but is willing to admit and does admit that he was advised by Mr. Thompson and Mr. Campbell not to compromise; and respondent refers to this part of complainant's bill to show that complainant understood that he had the right to compromise, and that he was not held or sought to be held to the papers he had executed. Complainant did remain in Mobile until after the April term of the court, and inquired and looked into the suit.

What interviews he had with Mr. Campbell, or what information he obtained from him respondent has no knowledge or information.

Respondent cannot remember when complainant again returned to Mobile, but he says he came to Mobile frequently during the progress of the cause, and respondent believes he attended each court, and generally stayed at Thompson's house. For what reason respondent does not know, but supposes it was because of his desire to partake of his hospitality, and avoid the expense of a hotel. Respondent has no knowledge or information as to any desire on the part of any one to refrain complainant in respect to his conversations or associations. He seemed to go where he pleased, and to talk with whom he pleased.

Respondent has no knowledge or information of any paper made by complainant to Thompson in January 1847, nor of any representations that induced the making of any such paper, or the one of January, 1849, which he supposes is the one to which complainant refers, at which time complainant was in Mobile looking after the suit. As to all these matters in the bill respecting what passed between Thompson and complainant before the final decree, respondent is ignorant. Respondent is informed and believes that twenty thousand dollars was agreed to be paid Messrs. Campbell and Chandler for a successful prosecution of the suit besides one thousand dollars paid as hereinafter set forth; and that Thompson had satisfactorily arranged it. Respondent is informed and believes and states that in 1849, when complainant was in Mobile, he executed to Thompson some deed or papers for the purpose of defining Thompson's rights

with complainant, and whereby complainant conveyed or undertook to convey to Thompson half the estate remaining after satisfying the claims of others, expenses of suit, &c.; and that this was done in acknowledgment of the rights of others, and was entered into as a rule of division between complainant and Thompson.

In this, however, respondent had no interest, and of it he had no knowledge or information until long after the deed of February, 1851. Respondent says complainant, besides being in Mobile in 1849, as before answered, came to Mobile about the 6th of February, 1851, and during this visit the deed of 15th February, 1851, was made.

The history of the negotiation and determination upon the rights of the parties, and the execution of the deed are untruly set forth in the bill. The facts, so far respondent has any knowledge or information respecting them, are these: After the decree in the Supreme Court, and before complainant's arrival in Mobile, Mr. James Campbell and respondent had expressed a desire to Thompson and Primrose to have the rights of all parties defined and settled, and felt anxious to have this done. Respondent heard that complainant was coming to Mobile, or that he had just arrived (which respondent does not remember), and he requested Mr. John A. Campbell to appoint a time when all parties could meet him, talk the matter over, and adjust their rights.

Mr. Campbell suggested some evening a few days from that time.

This was the first conversation respondent remembers to have had with Mr. John A. Campbell on the subject of the suit, or the matters embraced in it, and it was a simple request for him to appoint a time when the parties might meet, talk over, and adjust their rights, and his simple reply was the designation of an evening. Without further interview or communication with Mr. John A. Campbell so far as respondent knows or believes, the parties met at his office at the appointed time. Respondent and James Campbell came together and preceded the others a few minutes, then Primrose came, then complainant and Thompson. Nothing was said appertaining to the matter until all arrived, when the object of the visit was stated by some one of the parties, and the matter was talked over. Each party mentioned with an approximation to exactness his outlays and expenses. Some one of the parties (James Campbell, respondent thinks) proposed to refer it to Mr. John A. Campbell, to which all assented, and readily, as respondent is advised and believes.

Mr. Campbell stated generally, that he supposed each had rendered valuable services and spent money in the case, and suggested that the rights of complainant should be one-third, and each of the others one-sixth. With this suggestion all expressed satisfaction except Primrose, who objected to the allowing of one-third to complainant, stated his own services and labors in the cause, represented that the matter had been chiefly done by others than complainant, that he had originally expressed contentment with but little. Mr.

John A. Campbell repelled this idea, and said that although the others had chiefly been instrumental in carrying the case through, the title was in Collins, and he ought to have the largest share. Mr. Campbell requested the parties to consider of what had been said, and if he could aid them to call on him. The parties left his office, went to an oyster house, and took an oyster supper, and talked the matter over, and consulted as to the course to be pursued in reference to the property. Complainant seemed particularly pleased at Mr. Campbell's having suggested so large a share for him. It is untrue that the interview in Mr. Campbell's office in February, 1851, was the first intimation that complainant heard that respondent, James Campbell and Primrose claimed an interest in the matter. Respondent is advised and believes that he knew others were interested with Thompson from the beginning; that before 1849 he knew who were interested, and that Mr. John A. Campbell stated to him in 1849, that others were interested, and that his reply admitted his previous knowledge of the fact, and respondent is satisfied complainant well knew the parties interested with Thompson, at least as early as his first visit to Mobile. Respondent has set forth substantially all that he remembers or believes to have occurred or been said at Mr. Campbell's office, except that there may have been some general allusion by Mr. Campbell to what would remain to be done in the cause. The pretences of complainant of surprise and reluctance are untrue. Respondent is informed and believes the fact to be that Thompson attended on the invitation of complainant himself, he stating to Thompson the object of the meeting. It is entirely untrue that Mr. Campbell proceeded to draw any instrument in writing to carry out his recommendation, or proposed, or was requested to draw any. The deed which is appended to the bill as Exhibit A (which was the first and only paper respondent knows anything of resulting from, or growing out of the interview in Mr. John A. Campbell's office), was produced at the office of William D. Primrose, and executed several days, and respondent thinks a week or more after the interview in Mr. Campbell's office, it was executed in triplicate, and bore its true day 15th of February, 1851.

Respondent thinks complainant himself produced the paper. Thompson, at the suggestion of Primrose, added a clause whereby complainant undertook to procure his wife's release of dower. The interview in Mr. John A. Campbell's office occupied a winter's evening, some three or more hours. Respondent is advised and believes that complainant came to Mr. Campbell's office, knowing the object of the meeting, and the parties he was to meet. He had full time for reflection, for consultation with whomsoever he might wish; he knew the decision of the Supreme Court; knew the facts of the case fully; had paid particular attention to the value of the property, and in the preparation of the evidence, and turned his attention especially to proving its value, and knew perhaps as well as any of the parties the value of the property. He executed the deed of 15th February,

1851, after deliberate reflection and with full knowledge, and has since again and again ratified the same as more fully set forth hereafter in this answer. He executed the deed under no pressure from his counsel, and when Mr. Campbell was not present, nor was Mr. Chandler.

Respondent is informed and believes that complainant had heard of his success in the Supreme Court before he left Texas, that he had heard the cause argued below, that the final result was no surprise to complainant, but that he had for a long time confidently expected such result. It is probable that then, when complainant felt that he had by the labor, knowledge and means of the defendants to his bill, and the exertions of his solicitors, been raised from poverty to wealth he had never hoped for, and could not have attained unaided, and that he had been held to no previous bargains, but dealt with in a spirit so liberal as to surprise him, he was somewhat disposed to be just, not liberal. Respondent refers to the account given by complainant in this part of his bill of his feelings, to show that he acted with the feeling and understanding that he was adjusting the defendants' rights without regard to any previous transactions, and with a full realization of the idea that the estate recovered was his own.

At the meeting in the office of Primrose, respondent remembers of nothing having been said of James Campbell's means, commercial ability, or willingness to advance money. He is very confident that respondent, nor any of the parties interested with, ever with respondent's knowledge or consent, spoke of any such matter with a view of influencing any conveyance by complainant. The fact is, that James Campbell was a man of more means than any of the parties, and had much knowledge of the value of real estate in Mobile, and of improving it to advantage, and respondont thinks it probable that these facts may have been spoken of among the parties in some one of their many conversations and consultations about improving, selling, mortgaging and building up the property. Nothing was said about not recording the deed in Mr. John A. Campbell's office, and nothing in Primrose's, except an expression of desire by Primrose that the deeds should not be put on the record until his pecuniary condition (which he was hoping speedily to better) could be altered, and the defendants to the bill should execute to him a deed for his right. This was the only deed or conveyance in contemplation of being made after 15th February, 1851.

The following is the history of the alley ways: On 31st January, 1835, James Campbell and respondent purchased of Joshua Kennedy the lot bounded by them. The purchase was hastily concluded for ten thousand dollars in cash. Joshua Kennedy was about leaving for New Orleans, and made the sale to depend upon the payment of the money before he left. The purchase embraced the alley ways. The money was paid to Henry Lewis, the agent of Kennedy, who was to prepare and obtain a deed from Kennedy. Lewis, in taking the deed,

omitted the alley ways, but Joshua Kennedy acknowledged and respected the right. Campbell and respondent built on the property and erected the houses with reference to the alleys, having doors and windows, and offices opening on them.

Kennedy was present almost daily when the houses were building. Kennedy not only suffered Campbell (respondent) and *complainant* to open and keep open paved alleys during his life, but himself built on the opposite side of Water Street with reference to a continuation of the alleys, and projected their continuation from Water to Royal Street, as a means of enhancing the value of the property on either side of such ways. After the death of Joshua Kennedy, Moses Waring, who with John A. Campbell and Joseph Wiswell had bought the property of Campbell and respondent from the bank (to whom they had sold), came to respondent and complained that one or more of Kennedy's heirs had placed a temporary obstruction in the alley ways, and asked respondent the facts in reference to them. Respondent informed him, Mr. John A. Campbell, as respondent is informed and believes, was applied to by Waring to get Kennedy's deed reformed so as to include the alleys, and he advised him to await the decision of complainant's cause by the Supreme Court of the United States, expressing the opinion that should it be favorable to complainant there would be no difficulty in obtaining a conveyance of them. After the decision by the Supreme Court Thompson disputed the alley ways, and Mr. John A. Campbell became offended, and he supposes wrote the letter appended to complainant's bill. The alleys through the property became so evident a means of increasing its value, that complainant and those interested with him have not only carried out Kennedy's design of extending the alley from Water to Royal, a distance west of nine hundred feet, but they have opened and extended the alley east to Commerce Street a distance of one hundred feet, making an alley from Royal to Commerce. They have continued the other alley to St. Anthony Street a distance of one hundred and fifteen feet north, thus adding to the alleys, a continuation and addition of eleven hundred and fifteen feet. They have sold property, and bounded them by the alleys thus established. It is untrue that respondent and James Campbell withdrew opposition to the alleys. They never made any, nor did any one but Thompson, so far as respondent is advised and believes.

Respondent explained the matter to complainant, and he yielded a ready assent to granting the alleys. The conveyance was made willingly and under no pressure. Respondent does not know of any dispute of Mr. Campbell's fee. It was settled as stated in the bill, after Mr. Campbell's letter, and the mortgage given to secure it was dated the 1st of July, it being the period agreed on from which interest should run. Mr. Chandler's fee was also settled as stated in the bill, and also dated back. The notes of Mr. James Campbell were given to Mr. John Sargent for his fee of three thousand dollars. They were paid from the sales or rents of the property under the

power to complainant and respondent hereinafter more particularly mentioned. One of them was paid by respondent during complainant's absence, the other by complainant and respondent. On 16th July, 1851, complainant being about to visit Texas, made to James Campbell and respondent his power of attorney, of which Exhibit E to the bill may be a correct copy, but respondent has no copy of it, and complainant he supposes has the original, which he insists be produced. This power was made that the parties interested might during complainant's absence be facilitated in acting in reference to their joint estate.

Respondent supposes complainant thought Campbell and respondent experienced and capable business men. After the return of complainant to Mobile, arrangements before discussed were made for improving the property and paying the debts, and for that purpose James Campbell and Drury Thompson executed on 20th December, 1851, their power of attorney, recognizing the interest of the parties as adjusted by the deed of the 15th February, 1851, and authorizing them to execute any mortgage, or give any lien or incumbrance on the property, and to sell the same, and to collect the rents, and to pay off all incumbrances, which power said Collins and respondent accepted and undertook to execute, and gave of the same date their obligation to execute the power, at the same time said Primrose executed his ratification of said power. Respondent says said power was among the papers of respondent and complainant, and has been retained with the books and papers of the transactions under it by complainant, and respondent believes he still has it. Respondent is unable to append a copy of said power. He has no copy, and but one paper was executed. He appends and makes part of this answer a copy of said ratification of Primrose, and also of the acceptance and undertaking by complainant and respondent marked Exhibit A. Respondent says said power and said undertaking in reference to it were made more than 10 months after the deed of 15th February, 1851, was executed, more than five months after the parties had been let into full possession of all the property, and more than five months after the final adjustment of the boundary line with Kennedy's estate, and the execution of the deed for the property by the executors and heirs of said Kennedy. After complainant had had the fullest time and opportunity for reflection, investigation and knowledge, respondent says that not only did complainant accept said power, and undertake to execute it, but under, in ratification of, and in express recognition of the rights of the parties as settled by the deed of 15th of February 1851, complainant and respondent, in February, 1852, procured an office, and opened books, and assumed management of the property. Up to that time about seven thousand four hundred dollars ($7,400) had been paid out by James Campbell and respondent from their own funds for improvements upon the property made at the request of all concerned, including complainant.

From February, 1852, to November, 1853, complainant and re-

spondent continued to act under the power without objection by complainant, and without pretence, so far as respondent knows or believes, that complainant asserted or claimed any rights adverse to the settlement of 15th February, 1851. Under said power they borrowed ten thousand dollars of William Jones, Jr., on 15th March, 1852, on five years' time. To secure which, the notes of complainant endorsed by James Campbell and respondent, and a mortgage on the property by complainant were given. The name of James Campbell was required on the notes by the lender.

On the 20th March, 1852, part of the property was under, in pursuance of, and in execution of the power and in ratification of said deed of 15th February, 1851, sold to James, John, and Samuel Battle for thirty-five thousand dollars in cash, complainant executing a deed for the estate sold, and James Campbell, Thompson, and respondent executing a ratification thereof on the deed at the request of complainant. On 24th March, 1852, complainant, respondent, Thompson and James Campbell jointly executed to said Battles a deed enlarging the alley ways provided for in the foregoing deed to said Battles, and mentioning said prior deed, and referring to and adopting the same. About the 1st of April, 1852, nine thousand dollars in money were distributed under said power among the several parties, according to their several rights under the deed and adjustment of 15th February, 1851, that is to say, three thousand dollars to complainant and fifteen hundred dollars to Primrose, Thompson, Campbell, and respondent, said sum to each. Complainant had from time to time drawn sums to meet his demands, and the sum paid to him was three thousand dollars, less about eight hundred dollars, the amount before drawn. About the first of April, 1852, another portion of the property was sold to Jacob Magee for fifteen thousand dollars, his notes and a mortgage taken. A deed was made to said Magee by complainant, Campbell, Thompson, and respondent executing their quit claim at same time. On 16th June, 1852, another portion of the property was sold to G. W. Dorrance and others for ten thousand dollars, complainant making a deed, and said Campbell, Thompson, and respondent ratifying the same at complainant's request, to secure six thousand dollars of the purchase money, said Dorrance and others (his partners) made a mortgage on the estate purchased, to complainant, respondent, Thompson, and James Campbell. On the 1st day of March, 1853, another portion of the property was sold to Robert W. Smith for nine thousand dollars, complainant making a deed, which, on the same day and on the same instrument, was ratified by Thompson, Campbell, and respondent. For five thousand and forty dollars (the purchase money not paid in cash), said Smith executed his mortgage on the estate to complainant, respondent, Campbell and Thompson.

On eleventh April, 1853, another portion of the estate was sold to Thomas T. Bolling for fifteen thousand dollars, five thousand dollars of which was paid in cash, and a mortgage given on the estate

to secure the balance. The deed was made by complainant, and it was ratified as were the before-mentioned deeds.

The notes of Magee were made payable in sums, and at times to meet Mr. John A. Campbell's portion of the fee of twenty thousand dollars, and the remainder of them were set apart to go in payment of Mr. Chandler's portion of the fee.

The notes of Bolling were drawn to meet the principal and interest of the money borrowed of William Jones, Jr., note for note. The notes of Magee, of Bolling, and those remaining unpaid by Smith and Dorrance, together with policies of insurance effected on the property improved and unsold, were sealed up by complainant and respondent, and deposited for safe keeping to their credit, in the Southern Bank at Mobile, subject to be drawn out by either of them, all of which was done under, and in execution of said power. They have, without respondent's knowledge or consent, been drawn out by complainant, and applied by him to his own use. These sales, and the loan effected, were all made for the express purpose of raising funds to improve the property, and to pay off the burdens and liens upon it, and in recognition of the rights of the several parties. The policies of insurance were under and by virtue of said deed of 15 February, 1851, and of said power of attorney effected by complainant and respondent, and in their names, and on account of themselves and others, meaning thereby the defendants to complainant's bill and Primrose. With the moneys raised as aforesaid, and not distributed as before stated, complainant and respondent under said power made very large and valuable improvements on the property to the extent of about forty thousand dollars, they having erected six three story large and costly brick buildings on it for stores.

They paid taxes on the property, leased the estate from year to year, collected rents, and exercised supervision and control over the estate; all their acts of sale, leases, mortgages, improvements, insurance, of attention to the property and management of it were from day to day through a period of near two years constant recognitions and ratifications by complainant of the rights of the defendants to his bill, and of the rights of Primrose, under the deed and adjustment of February, 1851. He received the advantages of these acts, *open* an office, and with respondent leased the property, contracted for improving it, kept the books of the various transactions, complainant mainly entering them with his own hand. After a lapse of more than two years from the date of his power, he abstracted the books, accounts, and papers; drew out and seized upon the notes aforesaid and policies of insurance; took the power of attorney; suppressed them all; files his bill to set aside his conveyance, and offers no account for what he has.

The building contracts were made in the name of him and respondent. They were drawn up by complainant in his own handwriting; were so made under and in execution of said power; Camp-

bell and Thompson took no personal action in the matter. It is untrue that the sales of the property afforded complainant the first evidence of the value of the estate recovered. Respondent refers to the time and magnitude of the first sale, and the interval of time between the sales to show how untrue the pretence is. Respondent says the very groundwork of the bill on which the property was recovered from the estate of Kennedy was its large and increasing value, which was well known to complainant during the progress of that suit, that his attention was particularly directed to its value during the progress of the suit. He examined minutely and carefully into the same, and in February, 1851, made out a statement, a copy of which is appended to the answer of respondent's co-defendant, Thompson, in which he estimates the estate at two hundred thousand dollars.

Respondent denies that he, or any one else, so far as he knows or believes, made any singular remarks, or had, or evinced any anxiety or desire to obtain from complainant any confirmation of the deed of February, 1851.

Respondent does not know what legal advice complainant sought. He is advised and believes that Daniel Chandler, Esq., was not retained by him, and gave him no such advice as he pretends in his bill. Respondent says he is informed and believes the fact to be, that the law firm of Chandler, Smith, & Herndon was not formed until April, 1853, and that the two latter gentlemen only made Mr. Chandler's acquaintance in April, 1853. Respondent knows nothing of any letter written by complainant to Mr. John A. Campbell until Hon'l John A. Campbell read parts of the letter (or it may be all), mentioned in complainant's bill. The letter was read to respondent by Mr. Campbell for the purpose of calling respondent's attention to charges made in the letter against respondent, and of asking an explanation of the meaning of the letter in that regard. The property was leased in the falls of 1852 and 1853 by complainant and respondent under said power, and was again leased by respondent under the power in 1854. In the fall of 1855, respondent leased the two-thirds held by the others and did not lease the interest of complainant. In 1854 respondent heard of complainant's having spoken of litigating with the parties respecting the property, and hearing that he was about leaving for Texas, respondent went to him, and calling his attention to the trust they had undertaken insisted on a settlement before he should leave, but, on his representing the disappointment the delay would occasion, and promising to settle the matter on his return, and on the intercession of Thompson and Primrose, respondent withdrew his demand for a settlement, and consented he might go upon his journey. This was in the summer of 1854. He returned in a few months, took the books and papers which he had mainly kept, and went into a settlement of the account with Thompson. Before it was concluded, complainant took into his exclusive possession the books and papers, and has since kept

them. This was in 1854, and up to this time complainant acted under, and continually recognized the deed and settlement of February, 1851. Since that time he has set up his rights to the whole property, and refused any account or settlement.

Primrose spoke to respondent and the other parties about dangers to the title from the Baudain grant, and the debts of George Collins, but it is untrue that respondent or Thompson, so far as respondent knows or believes, spoke of these things to complainant in any other manner than as vain and idle notions of Primrose. It is utterly untrue that respondent sought by these, or any other means to disturb or influence complainant. Respondent, in reference to these matters brought forward by Primrose, and to prevent them having any effect on complainant, spoke as he felt, disparagingly of Primrose. He does not know what effect respondent's expressed opinions of Primrose may have produced on the complainant's mind in reference to Primrose. They seem to be friendly.

Respondent attempted to get no instrument for the purpose of obtaining a confirmation to two-thirds of the property. He never saw such a deed or paper, and never heard anything in reference to it, save from complainant's bill, except that complainant spoke of wishing to be protected on account of his sole responsibility to the purchasers.

Respondent does not remember when this was, but supposes he caused the paper appended to his bill, as Exhibit H, to be prepared in reference to that matter. Respondent in reply to complainant's suggestion agreed to unite in protecting him, and had the paper been presented to respondent he should have executed it at once.

Respondent knows nothing about the story in the bill about complainant's having been an alien, nor of his estates escheating. These were among the suggestions of Primrose, which respondent treated and spoke of as vain and idle conceits. In 1854, when complainant refused to settle, and threatened litigation, respondent told him that if he commenced suit he, respondent, would defend it in every possible way; that Primrose, since the settlement, had told respondent that there was a fraud in the matter, and that respondent would, if it really were a fraud, give the Kennedy's the full benefit of it. Mr. John A. Campbell's name was not mentioned in this matter, nor had he ever heard it mentioned in connection with it. Respondent's impression was, that if any fraud was committed, he, Primrose, and he alone was the author of it, and the only party knowing to it.

That he at any time unfairly attempted to obtain the confidence of complainant, or that he in any manner attempted to obtain it after their alienation began is false. Before complainant and respondent's alienation began, complainant expressed a desire to take up certain notes of his deceased brother George, and the other parties interested had agreed to let him have money for that purpose. Krebs held one of these notes, and respondent understood that Primrose had bought it for some small sum, and was insisting on its

payment. Respondent told complainant that he believed Primrose was acting wrong in this matter, and told complainant to tell Primrose that he, respondent, said so, and that he must make it right. This is the sole foundation for complainant's allegation of respondent's attempt to regain his confidence. It occurred before any alienation, and was without any other design or motive than to prevent a wrong towards complainant.

There was no plot or underplot of fraud, of which respondent has any knowledge, information, or belief. Respondent answering the special charges in the bill says :—

1. He has already answered the first charge as fully as he is able. Respondent had no intention or design of obtaining anything of complainant, or any heir of Joseph Collins, by unfair practices or circumventions.

2. Respondent knows nothing of Messrs. Campbell & Chandler having been consulted, or of either of them having given any opinion in reference to the matter previous to Thompson's return from his visit to Texas in January, 1844, and does not believe they were.

3. Respondent knows nothing of William J. Vandegraff's having been consulted, or having given any opinion at any time in reference to the matter. He has heard of this for the first time by the bill.

4. This respondent believes the fourth charge entirely untrue. Respondent believes and is informed that Campbell and Chandler were only retained in said matter after Thompson's return from Texas with complainant's deed. That Mr. Campbell was then consulted, and was disinclined even to give an opinion, and required the payment of one thousand dollars in gold before he would look at a paper, or give an opinion in the case. Respondent is advised and believes that after said sum was paid, and Mr. Campbell's opinion given favorable to a recovery, that he refused to undertake the suit until said Thompson should agree, and did agree, that complainant should be substantially interested in the property if recovered.

5. Respondent does not know what business or object Thompson had in visiting Texas in 1844, other than to buy complainant's rights, fairly, as respondent believes.

6. Respondent does not believe that Thompson was, in his interview with complainant in Texas, in January, 1844, acting under the advice of John A. Campbell. Respondent does not know whether the papers were made from drafts, or if so, who made the forms or drafts since the suit sprung up. Respondent is advised and believes that Thompson, in drawing the papers in Texas, was aided by some forms he had obtained from Mr. Campbell for general purposes.

7. Respondent knows nothing of what Thompson stated to complainant in Texas, but is informed and believes the charges in the seventh special charge in the bill are untrue.

8. The *ninth* (8th) special charge is utterly false. If any such understanding existed, respondent was a stranger to it, and respondent is advised and believes that none such did exist.

9. Respondent has no knowledge or information as to why complainant was inserted in the bill as a resident of Missouri. Complainant in his bill states himself to be a citizen of the State of Texas, whereas in truth respondent believes he is a citizen of Alabama. It may have been that for some purpose complainant may also in his other bill have had his residence misstated. Respondent knows nothing about the matter.

10. Respondent knows nothing as to why the suit was brought in complainant's name. The matter never occurred to respondent, he never thought anything about it. He supposed the solicitors employed best knew how to bring the suit, and gave himself no concern about it.

11. James Campbell was not a party to the original agreement between Thomson, respondent, and Primrose, but was subsequently admitted for the same reason that respondent entered into it, which has before been set forth. Respondent does not remember the time when he was admitted. He is willing to admit the date set forth by the bill. It was supposed that the Press property of James Campbell and respondent would be embraced within the bounds of the land claimed, and they did not know what might be the result as to it. The protection of it formed the inducement to respondent and James Campbell to enter into it, and it was agreed that in case of eviction, the recovery had on Kennedy's warranty should inure to the benefit of those concerned, including complainant, who, under Thompson's assent given, Mr. John A. Campbell was substantially interested in the recovery, and who throughout the suit was treated as so interested, and who throughout so considered himself, and so acted. Respondent supposes an inducement to let Mr. James Campbell in was the fact that he alone of the parties could with convenience advance the credit or money necessary to carry on the suit.

12. Respondent knows nothing of the object of Thompson's visit to Texas in January, 1845. He understood and believes his object to have been mainly to advise complainant that the Kennedys would make him offers of compromise, and to put him on his guard against accepting them. Respondent had no agency in hurrying him off, and knows nothing of his having been hurried off.

13. Respondent knows nothing of Thompson's statement on this trip as to the objects of his visit, but is informed and believes that the very object of this visit (or the chief object) was to apprise complainant of the magnitude of his interest, and to convince him that it was to his interest to reject all overtures that might be made, and that his statements to complainant were in conformity therewith. Respondent knows nothing of any statement by Thompson of the law of descents applicable to the case, and has no information respecting the same.

14. The visit of complainant to Mobile with Platt was unexpected to respondent, but was very welcome. The parties wished him to be

present, and personally to represent the suit. So far as respondent knows or believes, there was no agreement to keep complainant in ignorance of the agreement into which the parties had entered, or of the value of the estate; nor was it agreed with Primrose, so far as respondent knows or believes, that Primrose should not converse with complainant on the subject, or that complainant should be dissuaded from making inquiries of any one about the suit or estate. So far as respondent knows or believes, the desire was that complainant should actively participate in the suit. Respondent knows nothing of Thompson's having spoken disparagingly of Primrose, or of his wishing to restrain complainant from speaking to others than himself, and does not believe such to be the facts.

15. The fifteenth special charge is false, slanderous, and ungrateful. Campbell and Chandler became the attorneys of the several parties (including complainant), as he well knew. It was to Mr. Campbell to whom complainant was indebted for the special stipulation of his interest. It was he who stipulated for it. Mr. Campbell at all times guarded the interest of complainant, and never sacrificed it, and Mr. Campbell, in his suggestion of complainant's share, surprised complainant at the liberal provision suggested for him.

16. Respondent does not know what representations Thompson made of his large advances and heavy liabilities. It is certainly true, that he and the other defendants had made large advances, and assumed heavy liabilities in the case, and respondent is advised and believes that he made no false representations respecting the same.

17. Respondent has fully answered the matter respecting the alley-ways. The charge of collusion in the bill, and especially set forth in the 17th charge, is utterly false, and respondent believes was inserted in the bill purely to gratify a malicious propensity, by stating a known falsehood with the design of wounding the feelings of Mr. Campbell, who is not made a party to the bill. Respondent knows of no agreement in 1847. He understands and believes that complainant and respondents entered into some agreement in 1849, whereby they regulated among themselves the division of their own portions, leaving the portions of the other parties unadjusted, and to be finally adjusted; but of this respondent knew nothing at the time, and has now never read it.

18. Respondent has before fully answered as to the interview in Mr. John A. Campbell's office. His request of Mr. Campbell to appoint a time when all parties could meet him, talk the matter over, and adjust their rights, was the first and only conversation he had ever had with Mr. Campbell respecting the suit, the property, or the rights of the parties; and, save what occurred at the meeting, he has, since the request for the meeting, held no conversations with Mr. John A. Campbell respecting said matters.

19. Respondent denies that Mr. John A. Campbell, at the meeting in February, 1851, made any statements that were untrue, or calculated to deceive. The whole tenor of his remarks were made in a

spirit of liberality to complainant, and were so received and considered by complainant.

20. Mr. Campbell's statements at the meeting were general and introductory, to the effect, in general terms, that he supposed each had rendered valuable services and spent money in the case. The statement was true, and was known to be so by complainant. The parties themselves each stated his outlays with an approximation to exactness.

21. Respondent repeats his denial, before given, to this special charge. It is false.

22. The deed of February, 1851, was upon full and valuable consideration, was made after the land had been recovered, but before the parties were in possession. It was made by defendant several days after the interview in Mr. Campbell's office; was made free from pressure or influence. It was obtained by no mistake, under no misrepresentations, in no ignorance, in no implicit confidence, under no concealment of the truth, and by no collusion.

23. The deed for the alley ways was obtained in no such way as is charged. The agreement of Kennedy for the alley ways was a fact, existing in fact, supported by evidence, and, respondent believes, capable of enforcement. The facts in respect to the alley ways are before fully set forth in this answer.

24. The facts in reference to the alley ways, as before answered, were fully known to complainant when he executed the deed for them. The lot was sold for its value, and the agreement for alleys was such as respondent has before answered. In 1849, and after it had been improved and built upon, it was sold at public auction, and at a large sale of city property belonging to the bank, for ten thousand dollars.

25. Since the deed of February, 1851, respondent has not sought to obtain any other deed from complainant; he has before answered respecting this matter. Respondent is advised and believes that the subsequent paper proposed to be executed was drawn at the request of complainant, and for his protection, as before answered.

26. Respondent has before fully answered as to the bond of respondent. He has held the bond since it was delivered to him. It is of no value to any one else, and respondent has heard of no objection to his having it, save from the bill. It was delivered to respondent by no collusion, so far as he knows, is advised, or believes.

27. The twenty-seventh charge is untrue from first to last.

28. Respondent and his co-defendants, so far as he knows, is advised, or believes, have steadily contended that the settlement and deed of February, 1851, are valid, and that they have been again and often ratified and confirmed by complainant, as before answered. The acts of complainant, done since the deed, have been done by complainant with a knowledge of his rights and the facts of the case, and were intended to ratify and confirm said deed, and were done under no influences; none were exerted or brought to bear for any purpose.

The mode and form of settling the fees of the attorneys were such as they stipulated for, and such as complainant willingly assented to, and the terms were very liberal. The leases were mostly verbal lettings for one year; and when in writing, were of the ordinary forms used in the city, and were to complainant and respondent under the power. The transactions, in all these regards, were plain, straightforward dealings, for no indirect or ulterior object. The papers mentioned in the 28th interrogatory were not executed under the advice of counsel, so far as respondent knows, is advised, or believes. No fraud was attempted to be practised upon him.

29. Besides the large obligations undertaken and entered into for and on account of the suit, and besides various and considerable sums of which no account was kept, respondent and James Campbell advanced, in cash, before February, 1851, at least between twenty-seven and twenty-eight hundred dollars, in and about the necessary prosecution of the suit. Respondent is advised and believes that Thompson advanced considerable sums for the same, and that he advanced complainant more than one thousand dollars, which he has never been called on to pay, or in any way to account for. All these payments have been thrown in, and no account required or taken of them, and they have in no manner been refunded.

30. It is true that respondent furnished to Drury Thompson one thousand dollars before the commencement of the suit, to be paid Mr. John A. Campbell as a retainer and for an opinion in the case. Respondent has no doubt but it was so paid to Mr. Campbell. It is untrue that the same was paid for any purpose whatever other than as before stated. It is untrue that said sum was paid for any such purpose as is charged in the bill.

31. Besides the nine thousand dollars before mentioned, at various times, and in various amounts, as the wants of the parties required, sums of money arising from the property were distributed among the several parties, of which complainant received considerably more than one-third. The sum so distributed is supposed to be about .

Complainant has seized and keeps the books, papers, notes, and accounts showing said matters, and respondent is therefore unable to state the same with accuracy. Respondent has received about the sum of dollars, and he believes Mr. James Campbell has received only one-sixth of said nine thousand dollars, and the further sum of one thousand dollars from the rents of 1854, 1855. The property is still in debt to Mr. James Campbell for advances made on account of improvements during the year 1851, and after the deed of 15th of February, 1851.

Respondent, during his management of the estate with complainant, steadily applied the income arising from the estate to the annual expenses of the property. Notes taken for sales were set apart to pay *to* the debts due Campbell & Chandler, and William Jones, Jr., which, with other papers, as before answered, complainant has taken and withholds, not paying the debts for which they were set apart.

Respondent is not stimulating the mortgagees to foreclose their mortgages, but thinks, in justice, they might well proceed to foreclose the same against complainant, he holding assets good and sufficient, and set apart to pay them. The income has not been misapplied, save by complainant.

32. The annual rent of the estate is about thirteen thousand dollars. Respondent, acting under said power for himself, Campbell, Thompson, and Primrose, and not for complainant, has rented two-thirds of the property for eighteen hundred and fifty-six, ending the first of November, and refuses to apply any part of the proceeds towards the payment of said mortgage debts, complainant having in his hands the means expressly set apart, by his consent and coaction, for those purposes.

34. Respondent's rights are settled by the deed of February, 1851. On that, and the subsequent acts of ratification and confirmation, he stands, and upon his rights, as thus adjusted, he insists. It is untrue that complainant has offered any settlement of those rights. Respondent has no matters to settle, save in accordance with his rights as aforesaid; on that basis he always has been, and is, anxious and willing to settle. Respondent has before fully answered in respect to his bond.

33. The value of the estate unsold is about dollars. The defendants, if sustained in complainant's deed to them, will, with Primrose, have obtained two-thirds of the same, but for good and sufficient considerations, for aid, time, money, services, and obligations, which raised complainant from poverty to wealth he never hoped for, and, without which, he had no hope or prospect of obtaining. Respondent has not the agreements he entered into with Thompson and Primrose, nor that providing for James Campbell's interest, nor has he any copy of the same, and cannot more fully set them forth and discover them than he has done.

He entered into no agreement with Campbell and Chandler, and has no agreements entered into with them, and he has entered into no agreements other than those above named. Respondent says that although, for some reason which suited and moved William D. Primrose, and with which respondent had no concern and felt no interest, the deed of fifteenth of February, eighteen hundred and fifty-one, did not embrace Primrose as a party; yet the fact was, that by the settlement, said Primrose became equally interested with the defendants to this bill in the two-thirds conveyed to them, and holds the obligation of defendants to this bill for said interest. This is a matter well known to complainant, and has been so known to him since the 15th of February, 1851, and defendant insists that said Primrose is a necessary party defendant to this bill, and should be made such. And respondent, having fully answered for plea, says, that the deed of complainant, of the fifteenth February, 1851, exhibited to complainant's bill as Exhibit A, conveying to respondent, James Campbell and Drury Thompson, the undivided two-thirds

part of the property sued for in complainant's bill, was made and delivered by complainant, and by the grantees received upon the express understanding and trust that the same was equally with the parties to the deed, for the use and benefit of William D. Primrose; and that the estate so conveyed has ever since been so held; all of which since has been and is fully known by said Sidney E. Collins; that said Collins so knowing, along with respondent, on 20th December, 1851, accepted, and for a long time acted under a power of attorney from said Thompson and James Campbell, to build on, sell and mortgage the property, to collect rents, and liquidate, settle and pay off encumbrances on the property, or debts due on account of liabilities incurred for the recovery of the same; and at the same time and for the purpose of more fully representing the interests of said Primrose as aforesaid, said Collins and Cleveland took and accepted from said Primrose an express written ratification of said power, reciting therein that he was interested in said property; under which power and ratification said Collins and respondent have acted, and have done many of the acts therein provided for, and so representing the interest of said Primrose and acknowledging the same, have paid from time to time large sums of money to said Primrose for and on account of his interest arising from rents of the estate so held by him. And so said Cleveland says that said Primrose is a party interested in said suit, and the same was so known to complainant when he filed his bill, and said Primrose resides and is within the jurisdiction of this court, and is amenable to its process, and is a necessary party defendant to said cause, and should be so made.

CHANDLER, SMITH & HERNDON,
Sol's for
WM. F. CLEVELAND.

THE STATE OF ALABAMA,
Mobile County.

Personally appeared this day before me, George E. Holt, Clerk of the Circuit Court of the United States, Southern District of Alabama, William F. Cleveland, who is personally known to me, who, being duly sworn, says: The foregoing answer to the bill of Sidney E. Collins is true in substance and in fact. The matters set forth, of his own knowledge he knows to be true; those upon information and belief he knows to be true.

(Signed) W. F. CLEVELAND.

Sworn to and subscribed before me this 10th day of March, A. D. 1856.

GEO. E. HOLT, *Clerk.*

Exhibits to Cleveland's Answer.

Exhibit A.

THE STATE OF ALABAMA,
Mobile County.

Whereas, Drury Thompson and James Campbell have this day executed a power of attorney to William F. Cleveland and Sidney

E. Collins, to do and perform certain acts relating to the building on a part of the property recovered in the suit of Sidney E. Collins vs. The Executors and Heirs of Joshua Kennedy, deceased, and to mortgage or create liens upon the same to raise money for building on the same, and for the sale of parts of the same, and for the collection of all rents accruing or which may accrue on all of said property, and to liquidate, settle and pay off all encumbrances on any part of said property, or debts due by any of the parties interested in said lands, on account of liabilities or otherwise, in the suit for the recovery of the same. Now I, William D. Primrose, do hereby acknowledge that said power is executed with my consent and wish, and at my request, so far as my interest may exist in said lands and property; and I hereby agree to ratify the same, and do covenant and agree that the same shall be carried out as fully and as effectual and binding on me as though I had in person executed the same.

In testimony whereof I have hereto affixed my hand and seal this the 20th day of December, A. D. 1851.

WM. D. PRIMROSE. [L. S.]

THE STATE OF ALABAMA,
Mobile County.

Before me, William Brooks, a Justice of the Peace in and for the County of Mobile, personally came and appeared William D. Primrose, who acknowledged that he signed, sealed and delivered the foregoing instrument of writing to Drury Thompson and James Campbell, on the day and year therein set forth, and for the uses and purposes therein mentioned and expressed.

Given under my hand and seal this 22d day of December, A. D. 1851. WILLIAM BROOKS, [SEAL.]

Justice Peace M. C.

Exhibits.

Paper marked Exhibit (A), without signatures, which is annexed to and part of the foregoing answer, is the same marked Exhibit H to the answer of defendant Thompson. (See page 259.)

Filed 10th March, 1856. GEO. E. HOLT, *Clerk.*

And afterwards, to wit, on the twenty-first day of March, A. D. 1856, the defendant, James Campbell, filed his separate answer to the said bill of complaint, in the words and figures following, to wit:—

In Chancery. The answer of James Campbell to the bill of complaint of Sidney E. Collins, exhibited and pending in the Circuit Court of the United States for the Fifth Judicial Circuit, and Southern District of Alabama, against Drury Thompson, William F. Cleveland and respondent.

Your respondent, reserving to himself all right of exception to the bill of complaint for answer thereto, says: It is true that a suit was commenced in this court in April, 1844, in which the said Collins was plaintiff. The names of the defendants, the solicitors of record,

the orders and decrees in that suit, and the objects sought by it, are correctly described in the bill, but the record being a part of the records of this court, this respondent prays that it may be considered evidence so far as it may be important to elucidate this cause.

This respondent admits that Drury Thompson became possessed of the deeds and powers stated in the bill, and set forth in the answer of said Thompson, on file in this suit, and that the suit was instituted by him in the name of and during the absence of the plaintiff. This respondent admits that he became interested in the title of said Collins through said Thompson, in December, 1844, by an agreement of which Exhibit K to the answer of said Thompson is a copy. Respondent confidently relied upon that agreement as giving him the interest therein specified in said land until the final decree in the Supreme Court of the United States in December, 1850, and to that date had fulfilled all the covenants and conditions thereby imposed upon him. Soon after the news of this decree reached Mobile, this respondent demanded of said Thompson a settlement. This he declined to make in consequence of the absence of the plaintiff. It was suggested by William D. Primrose to respondent that said Thompson would combine with Collins to defeat all the other parties, and the suspicions thus engendered led to some acrimonious conversations, and coolness arose between said Thompson and respondent.

Notwithstanding the said contract of Dec'r, 1844, and the deed upon which it was founded, this respondent always admitted the claim of said Collins to liberal treatment in any final settlement. Such has been the express understandiug with said Thompson at the date of this respondent's admission to an interest, and such has been the common agreement and understanding among all the parties throughout the progress of the case. From this respondent had no intention to depart, but he wished the interest to which he was entitled to be ascertained. His desires in this matter were known to, and he believes shared by, William F. Cleveland.

Early in February, 1851, after the arrival of said Collins in Mobile, said Cleveland informed this respondent that there was to be a meeting of those concerned in the Collins suit, at the office of Campbell and Chandler the same evening. This respondent accompanied the said Cleveland to the office of said firm, and shortly after Primrose, and then Collins and Thompson, came in. This respondent says, that before this meeting there never had been a conversation or communication of any kind between said law firm, or either of its members, and this respondent concerning said suit, respondent's interest in it, or concerning any settlement in relation to it. Nor has there been any since. The entire intercourse between those gentlemen and respondent in reference to said suit, his interest in it, or its results, and any and every matter connected with it, commenced and ended on that evening, and at that meeting.

It was conducted openly in the presence and hearing of all the parties; and the complainant in this cause was present, and partici-

pated in it all. This respondent says that all the charges in the bill of concert, collusion, combination and adjustment of parts, in so far as this respondent is concerned, and those gentlemen with him, have no foundation in fact. This respondent has no knowledge of, nor has he ever heard of any fact or circumstance to authorize any, the least of these imputations on any of the parties, and believes each and all the charges to be false and scandalous.

The conversation was general, and mainly of the interest of the parties in the land recovered. At an early stage in it this respondent proposed to refer the whole matter to Mr. John A. Campbell, and let him decide between the parties concerned. No one dissented, but all seemed to assent cordially. Mr. Campbell, after some few remarks, suggested as a proper division, that Collins should have one-third, and each of the others one-sixth.

This respondent assented; Primrose immediately and strenuously objected to the discrimination in favor of Collins. He represented his claims as higher than those of Collins; that he had rendered greater services; been exposed to danger, and was entitled to more than Collins. He made no objection to any other claim than that of Collins. He depreciated his title; said of himself he could have made nothing of it, and that he had always said that he would be satisfied with some negroes and cattle. Mr. Campbell stated to him, that without the Collins title there could have been no recovery; that the claims arising from the possession of the title were spurious claims in Collins, and that he, Primrose, had no right to cry them down. A conversation of some length did then ensue, statements were made of the amounts advanced, and the services rendered by the different parties. Thompson mentioned the amount advanced by him; Cleveland stated the amount advanced by respondent and himself to be two thousand seven hundred and seventy-five dollars. Mr. John A. Campbell said that whatever the others had done, still the title was in Collins, and that he had undertaken the suit with the distinct understanding and agreement that Collins was to have a substantial interest.

During these conversations the value of the property recovered was sated by Thompson to be two hundred thousand dollars. This was said in reply to a question of Mr. John A. Campbell, who then said that the original estimate was only $80,000 or $100,000, and that each of the parties would, under his suggestion, *would* get more than double what *he* individually would receive, and much more than they had originally anticipated. The objections of Primrose seemed to have been withdrawn. The others to all appearances assented, and a general conversation ensued concerning the future steps to be taken in the suit, and of the accounts to be taken. This respondent says, that complainant neither expressed nor showed surprise at meeting any of the parties.

The allegations in the bill of inducements and persuasions on the part of Mr. John A. Campbell, prior to respondent's suggestion, are wholly untrue. The assertion in the bill of a reply by com-

plainant to that suggestion to the effect that these claims were wholly unknown to him, and that he knew nothing of the services rendered or money advanced, is wholly untrue. Such a reply was entirely uncalled for, and none such was made. These conversations occupied the greater portion of that evening. The parties left Mr. Campbell's office, and his parting words were, to consider the whole matter, and if he could be of any service to call upon him.

After leaving the office of Mr. Campbell, the parties all repaired to an oyster house. The suit, its incidents, the steps yet to be taken in the accounts, and the future improvement of the property recovered, continued to be the topics of conversation. The whole matters connected with the division just before suggested by Mr. Campbell, were fully and frankly discussed, the parties expressed themselves contented, and it was understood that Collins should go to Mr. Campbell, and have the papers drawn in accordance with his suggestion. The parties then separated. On the next, and some three or four days succeeding that, all the parties were frequently together. During these interviews, generally occurring at the office of Primrose, their conversations were mainly of the suit and recovery, of the steps yet to be taken, of the accounts to be had against the defendants, and of the means of rendering the property available. These conversations were almost wholly of the future. There was little or no further discussion of the method or terms of division. That ended with the night of the meeting. No inducement was held out to complainant to persuade him to the terms of the division, none were needed, and none offered. Had they been needed, it would not have been towards complainant, of all he was most satisfied.

Respondent was well pleased that his interest was defined, and that he knew exactly what it was, and he freely offered his means and assistance towards making the property available. The allegations of the bill that a deed was drawn and signed on the night of the meeting, and redrawn next morning, are wholly false. No papers were spoken of that evening, and none drawn or executed until Saturday the fifteenth day of February, 1851, some days after the meeting at Mr. Campbell's office. On that day three papers were brought by complainant to Primrose's office, where the parties all were. These were in the handwriting of Mr. James H. Campbell, and were complete even to the date which was of that day. They were examined, and found to be in strict accordance with the terms suggested by Mr. John A. Campbell. At the suggestion of one of the parties, Thompson drew another copy, with the addition of a dower clause, and then wrote the same clause upon each of the papers brought in by Mr. Collins. These papers were then executed by all the parties. They were almost immediately after acknowledged before William Brooks, Esq., who had been brought to the office for that purpose. One of these papers was handed to respondent, and he has since retained it in his possession. He will produce it at the hearing. He appends a copy marked Exhibit A.

This respondent says, that said deeds were executed freely by said complainant, after ample time for reflection and deliberation, and with a full knowledge of his rights, and their value.

Mr. Campbell had proved to be his friend. By his bill complainant believed him to be his friend and counsellor, then and long after that time. He was free to, and had been invited to call upon him. By his bill he was surprised and dissatisfied.

This respondent is advised and believes that during the time between said meeting and the execution of said deeds, he did not once approach that gentleman for advice, counsel, or assistance.

This respondent believes that no feeling at that time existed in the mind of complainant that would have prompted him to seek advice or counsel of any one, and that said settlement met his hearty approval. This respondent will answer the charges contained in the bill against the integrity and validity of that settlement. The first charge is, that complainant was ignorant of the value of the property, and was in that respect misled. This charge corresponds to that contained in the original bill against the heirs of Kennedy, and which formed a leading question in that suit, as will more fully appear by reference to the records of this court.

The value of this property in 1830, the date of plaintiff's conveyance to Kennedy, and in 1844, the date of its commencement, were prominent subjects of inquiry in that suit. Many witnesses were examined to both of these points, the city assessments of taxes from 1830 to 1845, were collected and compared, and the sales of adjacent property ascertained. The case of the plaintiff required the largest estimates, and proof of that kind was sought. This evidence was in part procured by the complainant, as this respondent is advised and believes, and was at the hearing of that cause in 1847, debated in the presence of the complainant. This respondent says there was no great change in the value of the property from 1844 to 1849. In 1849 there was a tendency to improvement, which slightly increased in 1850; none in the latter part of 1851, and greatly in 1852 and 1853, until the pestilence of that and the next year in the Southern cities, and the drought of 1854 and 1855, produced stagnation.

Thompson, at the meeting in Campbell and Chandler's office, stated the property to be worth two hundred thousand dollars. This was double the value assigned to it for 1844, by the testimony of Sydney Smith and John Bloodgood, in said cause, and $75,000 more than the city assessment of it in 1851. The letter of complainant attached to the statement of John A. Campbell, forming a part of this answer, will show the complainant's own estimate of its value in 1851. Respondent regarded this estimate as extravagant. It was certainly not fraudulently low.

2. The complainant represents that he was simple, uneducated, easily duped, and was the victim of his easy, unsuspecting nature. This charge is the substitute for the youth and inexperience of his

former case. The statement is untrue. He was too old in 1851; twenty years had been added to his life, twenty years of trying and varied experience, and of a kind to relieve him of all claim to simplicity or ignorance. He was then, and now is, cautious, suspicious, vengeful, and careful of his own interests.

3. He charges that he was ignorant of the fact that there were other persons associated with Thompson, or who were to share in the decree, and was surprised by the decision and controlled by the influence brought to bear upon him. This respondent says, that the decision of Mr. John A. Campbell was a surprise to every person present. Respondent says it was a very pleasant surprise to complainant. It was more than he expected, and evidently more than any one of the parties would have assigned him.

Mr. John A. Campbell sided with his interest, and acted as his friend throughout. His suggestions of complainant's higher moral claim carried weight with them, and led to an acquiescence to which, as this respondent believes, no other man could have induced these parties. It was a surprise to Primrose, whose acquiescence was transient, who exclaimed against it at the time, and whose discontent has spoken again and again to the parties. A short time after the settlement was made he wrote to the plaintiff: "I wish to call to your mind that my just right and equity lies higher than yours. You claim by right of descent, I claim by right of discovery and services rendered. If I had not been in the case, defendants would have made such a case by proof that would have discouraged Messrs. C. and Chandler, and the result would have been a compromise for a few thousand dollars, and besides, you would in all probability never have brought suit, remained in ignorance of your rights," &c. And upon this, and even more of the like, demanded special favors in the compromise with Hallett then under consideration, and not satisfied with this favor, proceeded to sow discord afterwards. The decision was certainly unexpected by this respondent. This respondent says that Thompson had from some cause used great reserve towards him, and, as he is advised, towards Mr. Cleveland. He has from the first, and always, stipulated for liberality towards Collins, and expressed his desire that his, Collins', interests should be strictly regarded, but he did not inform us that he had entered into an agreement with the solicitors in the cause that Collins should have a substantial interest in the property. He did not inform us that he had made the agreement mentioned in the bill as made in January, 1847, but really executed in 1849. His reserve led to distrust between us, and to injurious suggestions on the part of Primrose, as before stated. Whether said Thompson deemed it essential that he should control the case free from interference, or had become alarmed by apparently conflicting obligations, this respondent does not know; but whatever the motive, this respondent will say that said Thompson uniformly answered to all claims upon him, that he would act fairly and honorably to all at the time of settlement. But

this respondent, looking only to the deeds and papers of 1844 and his own contract, says that he has no reason to suspect that liberal dealing or generous treatment meant that complainant should have double the share of any other, and ignorant of the facts.

Respondent was surprised at the result, but he had made his selection, and he was ready and did abide by it without a murmur. Respondent was impressed by the reasons offered by Mr. John A. Campbell in favor of Collins, and the facts presented by him, and was content, and so understood Mr. Cleveland to be. Thompson, in whose name the titles had been taken, who stood forward as the active manager of the cause, and had borne the brunt of the contest, was disappointed. His disappointment was expressed after leaving the office of Campbell and Chandler, but without discontent or repining. He said he would stand to what had been suggested, and in this respondent says he fulfilled his repeated promises to deal fairly with all the parties.

In relation to Collins, as this respondent has stated, the surprise was agreeable and grateful. He consoled Thompson by offering to combine and divide their shares; he spoke with great satisfaction of the solicitor who had exalted his claims, and with hope and expectation of the future.

As this respondent has stated, several days elapsed from the date of that meeting to the day of the execution of the deed. The conversations during this period were frank and full. The *the* amount of Cleveland and respondent's advances to the case were fully known to complainant, and the terms of our connection with the recovery seemed to be fully and exactly understood. Respondent had no reason to infer any ignorance or misunderstanding on the part of complainant; none was intimated, nor does this respondent believe that any existed. The whole subject of the suit, its connections and incidents, and the consequences to follow it, were spoken of freely, without reserve, fear, or distrust, so far as this respondent knows or believes; and when the deeds were signed, there was apparently perfect harmony.

4. This respondent having fully answered the allegations of fraud, concealment, ignorance, and surprise, will now answer the remaining charge, that said deed of February, 1851, was made without consideration, and while the land was held adversely to both parties, and in suit. This respondent says that the complainant, by the admissions of his own bill, by the evidence of his own deeds, and by the facts which this defendant is able to prove, participated in the prosecution and commencement of said suit, and with the intent, and with the full knowledge, that the results were to be shared by others as well as by himself. Respondent says that said deed was executed after its subject matter had been identified, and complainant's right and title thereto legally ascertained by the judicial tribunals having full and final jurisdiction of the same. Possession of the land was taken by complainant and respondent and his co-defendants, under

said deed, and has by them been jointly held from the summer of 1851 until 1854, without opposition from said complainant. Said property is now so held, and this respondent denies that any other or further deed is necessary, or that there was any agreement to that effect. Said deed was acted upon by all parties, and regarded as complete and final, as will hereinafter appear; and as to the matters of account in said deed stated to be thereafter taken with the defendants in that suit, and in the result of which this defendant was to share, he says, it was waived with the consent of this respondent, as will appear by the decree of April, 1851, in this Court, which all the parties accepted, and which none attempted to dispute or set aside. And as to the stipulations for costs and expenses and incumbrances named in said deed, respondent refers to the subsequent portion of his answer to show how respondent has fulfilled the obligations imposed upon him. And this respondent further answering says, that of his own knowledge he knows nothing of the matters in the long narrative in the said bill contained, and alleged to have transpired in Texas in 1844 and 1845.

He does not know of, nor has he been informed from hearsay or otherwise, save from plaintiff's bill, of any misrepresentations, fraud, or concealments committed on said complainant by Thompson or Primrose in Texas, by which the deeds and powers specified were obtained. Respondent knows nothing of complainant's interviews with Mr. Platt and others, nor anything of arrangements by and between Thompson and complainant, nor of his interviews with Mr. John A. Campbell, nor of any papers executed between Thompson and complainant in 1847 nor 1849, or at any other date prior to February 15, 1851. He knows nothing of any plans or intention, or attempt, on the part of said Thompson, to prevent said Collins from communicating with Mr. John A. Campbell or Primrose, nor has he any precise information of any of said matters alleged in the bill. He has his first information from the bill. Respondent says that said allegations are at variance with the position of the parties to the suit as he has always understood it, and are at variance with respondent's own relations to the suit, and to the parties in interest, as hereinbefore fully set forth. Respondent has no information of these matters, save from the bill and the pleadings in the suit, and he believes the statements of the bill in this respect to be wholly untrue.

And for further answer this respondent says, that having thus met the allegations of the bill to the date of the execution of the deed of February 15, 1851, he will proceed to consider the subsequent transactions between the parties, and to answer the assertions and charges made by the complainant in reference thereto. This respondent says that soon after the execution of said deed the parties turned their attention to the improvement of the property recovered. About the middle of April thereafter, on the return of the mandate from the Supreme Court, in considering the subsequent steps to be taken in

the case, the location of the dividing line of the Baudain tract, and the north boundary of the property, engrossed their attention. It was a material object with the parties to fix this line at St. Anthony Street. The decree mentioned in the bill was soon after entered, under what circumstances this respondent does not know. It is true it did not locate this line upon the land, and it is equally true that the said line was subsequently definitely ascertained, and the parties, on the last of June or early in July, 1851, obtained St. Anthony Street as the north boundary, and a lot worth $15,000 in lieu of $10,000. This was rather more than the full extent of what they had at any time contended for. This respondent is willing to admit that this was accomplished by the negotiations of complainant. Respondent readily admits that disagreements arose between Mr. John A. Campbell and his clients *arose* after the entry of said decree; but the acts or opinions of that gentleman resulted in no injury to complainant and his associates, and did not prevent them from accomplishing their utmost wishes. Respondent does not perceive how these differences form any part of the complainant's cause against respondent and his co-defendants. Complainant does not charge them with collusion with the solicitor in this respect. Respondent believes that he could not forego the opportunity of wantonly introducing these dissensions, even at a sacrifice to his cause. Respondent refers to the letter of Thompson, touching this matter, attached to the bill, as affording the best evidence that there was no collusion between the solicitor and these defendants at that date, and that any delay in the settlement with Hallett was not the result of any agreement between them. Complainant charges collusion in the matter of the alley ways, in June of that year, and continued to July 16th. The letter of Thompson, and that of Mr. Campbell, cover the period from April to July 16. Respondent refers to them to show the relations existing during this time between Mr. Campbell and his clients. These do not exhibit a state of feeling, from whatever misconception arising, conducive to collusion. They will not aid the statements of the bill, nor the allegations of the 17th special charge. This respondent, in answer to the statement that said bill was dismissed as to him and the Branch Bank by said decree, says that it was so dismissed in accordance with the prayer of his answer filed in that cause, and with the testimony adduced, showing that he was a *bona fide* purchaser, for valuable consideration, and without notice. In his further answer, respondent refers to the records of this Court. In relation to the alley ways sought to be linked with the charges in the bill, respondent answers that he knew them to have been projected by Joshua Kennedy prior to the purchase of said lot by respondent and Cleveland. This purchase was made in haste, and the condition was that the price, ten thousand dollars, should be paid in cash, prior to Joshua Kennedy's departure for New Orleans, a space of not more than two hours. The agreement was distinct that the alleys should be named in the deed. They were to be forty-five feet on the north,

and twenty on the east. The money was paid within the time to Henry Lewis, and he was instructed to take the deed from Kennedy. The alley ways were by some neglect omitted. Kennedy subsequently expressed his intention to respondent of putting a map on record to show the alley ways. Respondent and Cleveland erected a large block of buildings soon after, completely covering said lot. This was built with doors and windows on every side, and was completely surrounded by a pavement, and was planned and built with a view to these alley ways. It was commenced and completed in the lifetime of Joshua Kennedy, and he was almost daily on or about said premises. No one ever doubted the existence of, or the right to, these alleys in the lifetime of said Kennedy; their dedication was never disputed until 1849 or 1850, so far as this respondent knows. About this time respondent was told, by Mr. Moses Waring, that A. Meslier, the husband of one of the heirs of Kennedy, was obstructing them. This respondent expressed himself strongly of the wrong attempted, and offered to give his testimony to support them whenever called upon. At the time of the purchase by Waring, in April, 1849, respondent had recounted the history of these alleys to said Waring and John A. Campbell. Such was the history of these alley ways until 1850. From that date to the letter of Mr. John A. Campbell on the 16 July, 1851, they passed entirely from the attention of this respondent.

This respondent will now endeavor to answer the vague charges of the bill in this respect. To the first, that respondent and Cleveland had seduced Mr. Campbell to aid their interest in the settlement of February, 1851, respondent answers that his only conversation or communication with that gentleman, in relation to his interest in that suit, or the property recovered, commenced and ended at the meeting before stated. Not a word, not a sign, ever passed between said Campbell and respondent in relation to these alleys, save the conversation at the bank sale in 1849, and the short conversation in the street in reference, and solely in reference, to the controversy between Meslier and Waring. To the second charge, that his opposition to said alleys was withdrawn in July, 1851, on the receipt of Mr. John A. Campbell's letter, this respondent answers, that before the complainant's rights were established to this property, respondent had offered his aid to Waring to protect the right to the alleys. That offer was dictated by a sense of justice, arising from an intimate knowledge of the matter. Respondent had no subsequent reason for opposing the right to these alleys, and at the date of said letter had no opposition to withdraw. Said letter was a surprise to respondent. Nothing had ever occurred between Mr. Campbell and respondent authorizing the assertion that he was disposed to act in the manner implied by that letter. This respondent attributes that letter to some misconception, and believes that it arose from some unfounded representation by William D. Primrose. That letter contained the first intimation to this respondent that the fees of Mr. John A. Camp-

bell had been in any manner disputed. These were immediately settled, and the deed for the alleys given a few days after. This was nothing more than what respondent had always been ready and willing to do. This respondent says, no agreement, contract, understanding, or promise existed between this respondent, or any one else, and said John A. Campbell, so far as this respondent knows or believes, in relation to these alley ways; and all the insinuations, inferences, charges, and allegations in the bill, in this respect, are false and scandalous. Respondent speaks not only from his own knowledge, but also from information, hearsay and belief.

This respondent says, that soon after the deed of February 15, 1851, it became necessary to meet the expenses incurred in and about that suit. Complainant was without means, and respondent assumed and paid them all. In May following possession was acquired of the wharves attached, and of the vacant portions of the property. To make these available for the next leasing year, it was necessary that the vacant property should be cleared, and the wharves rebuilt and repaired. In accordance with the wishes of all the parties, this respondent assumed the liabilities existing, and entered upon the improvement of the property. Respondent cleared the vacant portions, and rebuilt and repaired the wharves, built fences, and filled in bulk-heads and streets. Respondent paid all expenses, advanced all the moneys for the improvements, and kept a strict account with said property until about the 11th February, 1852. During this period complainant was often in Mobile, and at these times continually on and about said property. The improvements and advances of respondent were made at his request, and with his sanction and approval. On the 16 July, 1851, he executed a power of attorney to respondent and Cleveland, to enable them more effectually to carry out said improvements. Exhibit E to the bill may be a correct copy. Respondent has no copy, and demands that the original be produced. On the 1st November, 1851, respondent and Cleveland had built upon the property wharves of great value. These were leased for the year commencing on that date, for $7,000. A portion of the rent notes were taken by respondent in part payment of his advances, and the balance by complainant. On the return of complainant, arrangements were made, as stated in the bill, for improving the property and paying the debts. These contemplated more extensive improvements than had yet been made. To carry out their plans, Thompson and respondent, on the 20th of December, 1851, executed their power of attorney to complainant and Cleveland, authorizing them to execute mortgages or give any lien or encumbrance upon the square bounded by Commerce, Front, St. Anthony, and St. Louis Streets, and to erect buildings thereon, to sell certain lots therein named, to collect all rents to accrue from said property, and to settle and pay off all debts and encumbrances. This was ratified by Primrose by an instrument under his hand and seal, executed on the same day, to Thompson and respondent. On the same day the said Col-

lins and Cleveland made and executed to Thompson and respondent an instrument in writing; by this they agreed and undertook to carry out the common intentions of the parties, and the objects of said power, to wit: to have the building erected; to use care and diligence in renting out said property and in collecting the rents; to apply all moneys in any way raised, and the rents, to the erection of the buildings, and to the payment and satisfaction of all debts and encumbrances on the property; to keep fair and regular accounts of all receipts and disbursements, and to exhibit the same whenever required. The said power was to cease and determine upon notice in writing to that effect, by any two of the parties, to said Collins and Cleveland, or whenever the buildings should have been erected, the debts thereby created, and all the debts, liabilities, and encumbrances on said property should have been liquidated, settled, and paid off.

Respondent is informed and believes that said power is in the possession of complainant, and requires its production at the hearing.

This respondent says, that the said undertaking by Collins and Cleveland to Thompson and respondent, was immediately after its execution delivered to said Thompson. This respondent is informed and believes that said original paper has gone from the possession of said Thompson and is lost.

Respondent attaches a copy of said undertaking, and a copy of said ratification of said Primrose, marked Exhibits B & C, and makes them a part of this answer.

On or about the 11th February, 1852, said Collins and Cleveland procured an office, opened books of accounts, and assumed the sole control and management of the property under and in furtherance of the terms and objects of said power; they, on or about the 15th March, 1852, effected a loan of $10,000 on five years' time, from William Jones, Jr. Notes were given for the repayment of this sum and the interest, and were indorsed by Cleveland and this respondent; and the payment further secured by mortgage upon the property. On or about this time said Collins and Cleveland effected a sale of a portion of the property to John, Samuel, and James Battle, for $35,000. On the first of April, another portion to Jacob Magee, for $15,000. On the 16th June, another to C. W. Dorrance for $10,000. On the first of March, 1853, another to Robert W. Smith, for $9,000, and another lot on the 11th April, 1853, to Thomas T. Bolling for $15,000. They have leased the property from year to year at a large annual rent. Respondent says, that from cash payments on said sales, said Collins and Cleveland have received the sum of $49,000, from said Jones $10,000, and from the rents of property, as near as this respondent can estimate, $42,000, in all one hundred thousand dollars to the date of November 1st, 1855.

During said time they have received into their possession and control the note of the purchasers for the remainder of said purchase money to the amount of $47,840.

Respondent for further answer says, that from the said date of February 11th, 1852, to Nov'r 1st, 1855, he did not in any way interfere with the management of said property, but left it solely to the control of said Collins and Cleveland under said form. When called upon by them he freely rendered his advice and assistance, and whenever sales were effected, Thompson and respondent, at the request of said Collins and Cleveland, executed their ratifications and warranties on the deeds to the purchasers. This respondent says that said form of attorney so executed by Thompson and respondent to Collins and Cleveland, and said undertaking executed by them as aforesaid to Thompson and respondent were made more than ten months after the execution of the deed of February 15, 1851, more than five months after the parties had been let into full possession of the property, and more than five months after the execution of the deed to them by the defendants in that suit, and the final adjustment and location of the boundary line mentioned in the bill, and after said complainant had had the fullest time for reflection, and abundant opportunity for investigation and knowledge.

This respondent avers, that not only did the complainant accept said power and execute said undertaking, but so did under, in ratification and in express recognition of the rights of the parties as stated by the deed of 15 February, 1851. This respondent says, that in further recognition of those rights, complainant proceeded to act upon and carry out said power. On or about the first of April, 1852, after the loan from Wm. Jones, Jr., and the large cash sales to the Messrs. Battles, about the time of the said sale to Magee, complainant and his co-agent distributed of the amount then in their hands, the sum of nine thousand dollars to the parties interested in the proportions of their shares as settled by the said deed of February 15, 1851. Complainant and said Cleveland built substantial stores upon the said property, leased the said wharves, stores, and tenements on said property, made the necessary contracts in relation thereto in the names of said Collins and Cleveland, and under the power and terms, and in fulfilment of the requisitions of said power of attorney, said complainant so continued to act under said power, and in daily recognition of said settlement of 1851, and without pretence, so far as this respondent knows, of any claim adverse to the interests of his associates, the defendants in this cause, to the summer of 1854. This respondent refers to the large rent received for the wharves in 1851, to the cash payment by said Battles of $35,000, in March, 1852, to the large prices at the other sales, to the intervals between the successive sales, and to the period of more than a year intervening between the first and last, to show how false are the pretences of said complainant, and how bare-faced the allegations of ignorance of the value of the property recovered. This respondent says, that the acceptance of said power, and the assumption of the control and management of the said property, were voluntary acts on the part of complainant, were effected by no fraud, combination,

collusion, or concealment, on the part of his associates; that they met the hearty approval of complainant, and if knowledge were needed on his part, placed him in the position best to attain any information of the property and its value.

His position afforded him every opportunity and means of satisfying any doubt in his mind as to his rights and their value. This respondent heard no word or expression of discontent. Nor does he believe that any ignorance, doubt, uncertainty, or misconception existed in the mind of complainant. This respondent will recapitulate some of the transactions that have occurred since the 15th of February, 1851, in order to show more fully the confidence reposed by all parties interested in the settlement of that date, and to exhibit more fully how said complainant has by his acts sanctioned and accepted the advantages to himself growing out of that confidence. This respondent says that in June, 1851, he, respondent executed to Daniel Chandler his five promissory notes for the sum of twelve thousand four hundred dollars, for the amounts and to fall due as follows:—

One for $2,160, due June 2, 1852,
One for $2,320, due June 2, 1853.
One for $2,480, due June 2, 1854.
One for $2,640, due June 2, 1855.
One for $2,800, due June 2, 1856.

That in July thereafter he executed jointly with complainant, their two promissory notes to John Sargent, as follows, for $3,000:—

One for $1,500, due May 1, 1852.
One for $1,500, due May 2, 1853.

That at the same time he executed with complainant their ten joint notes for eight thousand dollars to John Campbell, as follows:—

One for $800, to fall due July 1, 1852.
One for $800, to fall due July 1, 1853.
One for $800, to fall due July 1, 1854.
One for $800, to fall due July 1, 1855.
One for $800, to fall due July 1, 1856.
One for $800, to fall due July 1, 1857.
One for $800, to fall due July 1, 1858.
One for $800, to fall due July 1, 1859.
One for $800, to fall due July 1, 1860.
One for $800, to fall due July 1, 1861.

Respondent says, that these notes were given to secure the payment of their fees in said suit, to the said Chandler, Sargent, and Campbell. In March, 1852, Cleveland and respondent endorsed the notes given by complainant to the said William Jones, Jr., to secure the payment of the loan borrowed from him. These notes were five in number, and amounted to the sum of thirteen thousand two hundred dollars, as follows:—

One for $800, to fall due April, 1, 1853.

One for $800, to fall due April 1, 1854.
One for $800, to fall due April 1, 1855.
One for $800, to fall due April 1, 1856.
One for $10,000, to fall due April 1, 1857.

This respondent further says, that his advances before stated on the 11th of February, 1852, amounted to the sum of $7,400. That these advances were continued to the latter part of June thereafter, and that at that time the aggregate amount of moneys advanced from time to time since February, 1851, and the liabilities assumed by this respondent was over $14,000, thus making the total sum which this respondent paid, or became responsible for between said dates, over fifty thousand dollars. For the payment of said large advances, and for his protection against the heavy liabilities to which he was constantly exposed on said paper, this respondent has never asked for, nor received one line from said Collins as security or indemnity. He has had no lien upon the property, nor has he had or demanded the control of one of the many and large paper securities accruing to the complainant and his co-agent from said sales. This respondent had entrusted the management and control of his interest in said property to said complainant and his co-agent. He had no reason to suspect that this confidence would be abused. He was willing to wait for the repayment of his said advances, and to be repaid from time to time as the income of the estate came to their hands. He admits that his said advances have now been completely covered by his receipts from said property. Respondent further says that he was willing to trust to said complainant and his co-agent to meet the said notes to Chandler, Sargent and Campbell, and Jones, upon which was the name of this respondent as they respectively should fall due, from the resources to be derived from the property. This respondent says that after the said sales to Magee and Bolling, the notes taken from Magee were made to correspond in time and amount to the notes to fall due to said Campbell, and to the two last notes to fall due to said Chandler, and the notes of said Bolling so to correspond to those to fall due to said Jones, and were by said complainant and his co-agent by common understanding among the parties interested, specifically set apart and appropriated note to note, to meet those held by the said Chandler, Campbell and Jones. Respondent admits that said notes so taken were faithfully applied by said complainant and his co-agent to meet the securities for said fees and loan until the summer of 1855. This respondent is informed and believes that said notes so appropriated were by some means received into the sole possession and control of the complainant, and that he has and does refuse to apply them to the purposes for which they were set apart. Certain it is, that the note for $2,640, which fell due to said Chandler in June last, remains wholly unpaid, and that said complainant wholly refuses to apply said note of Magee so appropriated to its payment. This respondent

is informed and believes that the notes and securities so appropriated and set apart, and all the evidences of debts to said property, were by said complainant and his co-agent specially deposited in the Southern Bank of Alabama. He is further informed and believes that said complainant has withdrawn said notes and evidences of debt, and taken them into his sole control, and has steadily refused to give any account thereof to his said co-agents. Respondent says that said power of attorney has never been revoked so far as this respondent has been advised, nor has it expired by its own limitation, as the matters set forth in this answer will sufficiently show. Respondent states that the large sum of $18,400 yet remains to be paid, and that this respondent stands either as original promissor, or as endorser on the notes given therefor. These this respondent may be obliged to meet should said securities be not forthcoming from said complainant, and will be forced to tedious and expensive litigation for his ultimate reimbursement. Respondent says that his net receipts from said property are only eight hundred dollars, after appropriating to the payment of the balance due to him on his advances before mentioned, the sum of $1,500 received by him as his share of said distribution of nine thousand dollars in April, 1852, and another sum of $1000 in April, 1855. This respondent has received from February 15th, 1851, to this date, only the sum of eight hundred dollars above stated.

This respondent has set forth these facts, and refers to show in what light the said settlement of 1851 has been regarded by respondent, complainant and their associates, and to show the feelings of confidence that have continuously existed between them, to show the trust that this respondent has reposed in complainant, and how that trust has been by complainant invited, and accepted. Respondent refers to them more particularly to exhibit the contracts entered into by him, the responsibilities he has assumed, and the rights that have grown up in his favor from these mutual relations of confidence engendered and fostered by complainant. This respondent answering the remaining statements of the bill says, he has already set forth the fact that the sole management and control of said property was entrusted to said complainant and Cleveland, and so remained in their hands from February, 1852, to November, 1853. Respondent is informed and believes that the contracts during that time made, were drawn in the joint name of Collins and Cleveland, that they were made solely at their instance, and many of them by and in the handwriting of said complainant. This respondent had no connection with them, save to advise when called upon as to the best terms and conditions to be made for complainant and his associates. He did render material aid in carrying out these contracts, as to the names used in them, or the manner or form of drawing them he never gave them a thought. This respondent has never attempted to obtain any confirmation whatever of the settlement of 1851. His conviction

of the validity and final efficacy of that is sufficiently evidenced by the acts of this respondent already set forth.

This respondent knows nothing of complainant's consultations with Mr. Chandler. He learns for the first time from the bill, that in face of the large sums for which this respondent was liable, and in violation of the trust reposed in him, the complainant was secretly seeking to deprive him of his rights. Respondent is not surprised that the "incumbrances" should have been a stumbling block. The letters addressed to Mr. John A. Campbell, are attached to that gentleman's statement hereto appended, and made a part of this answer. Respondent is willing that they should speak for themselves. Respondent has seen them for the first time since the filing of this bill. This respondent has no knowledge or information of any threats, representations concerning Primrose, the Baudain grant, George Collins' creditors, Jefferson College, nor the alienage of Joseph Collins; nor has he ever before seen the paper attached to the bill marked Exhibit F, or any one like it. He is informed and believes that all the demands made upon said Collins were made for the purpose of bringing him to an account. He is advised and believes that his co-agent, Cleveland, did press said complainant, and strenuously urge him to produce the books and accounts of said property, which said complainant had wrongfully taken to his sole possession, to give up the notes and evidences of debt, and to come to a settlement and adjustment of their joint agency, and he is informed and believes that the said complainant has persistently neglected so to do, and evaded the requisition. This respondent has no knowledge, nor has he been informed of any plot or underplot of fraud in any of the matters set forth in the bill. He says that all and every of the allegations of the bill in this respect, are without foundation and utterly false. This respondent for answer to the special charges in the bill in the order that they are alleged and numbered says, that of the matters contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, he has no knowledge. He has never heard of any combination to deprive said complainant of his rights, nor of any fraud, misrepresentation or concealment to that end. His first intimation is from the bill; he believes the allegations in this respect to be wholly untrue.

11th. Respondent says it is true that he was not admitted to an interest in said suit until December, 1844, about seven months after its commencement. He denies that he was ever a party to any combination against complainant. He admits that his press and other property of great value were sought to be covered by the claim in said suit. He had been made one of the parties defendants from the outset. He had long been contending against the extension of a claim from the north over the same property. By this suit he was threatened from the south. He was advised of his danger and solicited to take an interest in said suit for his own protection, and was so admitted on condition of advancing all moneys requisite, and yielding

up all warrants held by him. These were sufficient motives to induce him to become interested in said suit, and the considerations demanded of him were deemed abundantly sufficient at the time by the parties concerned, The results of a suit carried on and sustained by respondent's ready compliance with the conditions of his contract, and affording abundant and unexpected wealth to complainant, respondent thinks might be satisfactory to him.

12 and 13. He answers that he has no knowledge nor information of the matters and charges therein contained. He believes them to be wholly untrue.

14. He answers that complainant's visit in 1845 was neither a surprise nor was it unwelcome to respondent. He does not know of, nor is he informed, nor does he believe there was any agreement to keep said complainant in ignorance of any matter or agreement whatever in relation to said suit or of the value of the estate. Complainant immediately on his arrival entered into an active part in the management of said suit in accordance with the wishes of all parties interested.

15. He says, Campbell and Chandler were the common attorneys of all the parties, and so far from sacrificing the interest of complainant they have uniformally befriended him, and to the suggestions of moral and equitable considerations in his behalf on the part of Mr. Campbell, complainant is indebted to the large share he now holds in said property. His present bosom friend would have made him at most the proprietor of a few negroes.

16. Respondent knows nothing of the representations alleged to have been made by Thompson. He is informed and believes that the said contracts were of complainant's own seeking, and the terms what he himself wished them to be. They accord with complainant's expressions continued long after the deed of 1851 of his intention to "share with Thompson as a brother."

17. Respondent knows nothing of any agreement in 1847. Since the filing of this bill he has heard of a contract made in 1849. This he has never seen nor read. He is informed, and believes it to have been an agreement entered into between Thompson and complainant adjusting their shares in any portion of any recovery to be had. He has already fully answered the allegations in relation to the alley ways, the influence sought to be made is unworthy of notice. He leaves the credit of the invention to complainant and his counsel.

18. Respondent answers this charge by a single fact. It is this: His first and last conversation with Mr. John A. Campbell in relation to said suit, and this respondent's interest in it, occurred on the night of the meeting in Campbell and Chandler's office, and in the presence and hearing of every person interested.

19. The remarks and statements of Mr. John A. Campbell were almost entirely directed to the other parties, and intended to show the superior rights of complainant, and to secure to him the largest

share in the property. Respondent says every charge in this respect is false. Respondent believes them to be at variance with the convictions of complainant.

20. Respondent says that every statement made by Mr. Campbell was true.

21. Respondent has already sufficiently answered this charge.

22. The deed of February 15, 1851, was executed at the time and in the manner already fully set forth in this answer. Respondent denies the statement of the bill of the time, place and manner of the execution of said conveyance. He admits that complainant was not in actual possession of the land. He says that said deed was made more than three years after the rendition of the decree in this court in complainant's favor, and nearly two months after the affirmance of said decree in the Supreme Court of the United States, long after the conveyances of said complainant had been set aside and himself reinstated in his orignal title, and when there was no adverse possession. Respondent says, said deed was made for valuable consideration, to wit, the remission of all claims for the large sums already advanced, actual services rendered, and assumption of future charges. He denies that said deed was obtained from complainant through ignorance, mistake or implicit confidence on his part, or by misrepresentation, concealment of the truth, collusion, undue influence or fraud on the part of this respondent, or his co-defendants. Respondent says, it was made voluntarily, deliberately, and gratefully by said complainant, with a full knowledge of every fact and incident of said suit, and of the interests of the grantees in it. It was made after the lapse of several days from the meeting in Campbell and Chandler's office. On each of these days he was free to consult the counsel and friend in whom he had then, and so long after retained such implicit confidence, and by whom he had been invited so to do. Respondent denies every allegation and inference of this charge, and claims, and will maintain the said deed to be good, absolute, final, and effectual.

23. The deed of July 19, 1851, was fairly obtained; the alley ways had an existence in fact; could and will be supported by abundant testimony, and could have been legally enforced, as this respondent believes. They were not new matter to the complainant, as is fully shown by the power of attorney, marked Exhibit E, and attached to the bill to which respondent refers. Said power recognizes the existence of these and other alley ways. It was made on the day of the date of said letter of John A. Campbell, and, as respondent believes, before that letter was received or seen by any of the other parties. Said power was made by complainant.

24. The agreement for, and the subsequent recognition of these alley ways have been already before fully set forth in this answer. The lot was bought at its full value, $10,000, cash. It was then a marsh. Respondent and Cleveland filled it in, and built large and substantial buildings upon it. These cost more than $20,000. In

April 1849, more than fifteen years after said purchase, and at a large and public sale, it was sold with the improvements thereon for $10,000 on time.

25. Neither this respondent, nor his co-defendants, so far as this respondent is informed or believes, have endeavored in any way to induce complainant to execute any confirmation of the deed of February 15, 1851. This respondent refers to the matters set forth in this answer, to the advances he has made and the responsibilities he has incurred, to show his estimate of the validity of said settlement, and the rights he has acquired under it. Respondent has never seen the original of Exhibit H to the bill. He leaves it to answer the allegations of this charge.

26. Respondent learns, for the first time, from the bill, that any bond whatever entered into the negotiations with the said William R. Hallett. By complainant's own admission he alone conducted and concluded said negotiations. Respondent supposes that said bond could only have been taken by complainant to be delivered to said Cleveland.

27. This charge has already been sufficiently answered; there is no truth in it.

28. This respondent, claiming and maintaining said deeds to be valid and effectual, says, that complainant has freely, voluntarily, deliberately, and with full knowledge of his rights, and of the value of the said property so regarded them; that if confirmation were needed he has fully confirmed them by the acceptance of said power of attorney of December 20, 1851, and his obligation of the same date, by acting under said power, and fully and honestly meeting his obligations under it for more than two years, by managing and controlling said property during said period in the joint names of Collins and Cleveland, and for the mutual benefit of all concerned, by distributing the surplus proceeds of said property in April, 1852, under the terms of said deed and by payment of moneys from time to time to July, 1854, on the interest of nearly all the parties concerned, and further by permitting and procuring this respondent more especially to fulfil the conditions and considerations of said deed, by making the large advances and incurring the heavy responsibilities hereinbefore more particularly set forth.

Respondent denies that said complainant was, at any of said times, ignorant of his rights; of the value of the property, or of the facts of the case, or under the influence of any unlawful practice whatever. He denies that these acts were procured by this respondent, or his co-defendants, or that they were the result of any design on their part to procure a ratification of said deeds.

29. Respondent denies the truth of this charge. Respondent and Cleveland, besides many payments, of which no account was taken, and many and heavy liabilities incurred, had advanced the sum of two thousand seven hundred and seventy-five dollars. Respondent is informed and believes that their co-defendants had advanced large

sums of money. Respondent cannot set forth the exact amount advanced. At the time of the execution of said deed it was agreed that no claim was to be made for moneys advanced, and no account was ever to be taken of said sums.

30. Respondent says, the said sum of one thousand dollars was paid to John A. Campbell long before this respondent became intrusted in said suit. It was not paid by this respondent, and he is informed and believes, that it was paid simply to retain the services of John A. Campbell in the prosecution of said suit, and for no other purpose whatever. The remainder of this charge is entirely new to respondent. It is wholly false. Respondent regards it as a wanton exhibition of ill-feeling and malice towards one who is not a party to the bill.

31. Respondent reiterating the statement of his answer, says, that his receipts from said property over and above the sums advanced and paid by him since February 15, 1851, are not more than eight hundred dollars. He further says that said complainant has had entrusted to his possession money for more than sufficient to pay off all the debts of said property, and notes and securities sufficient to meet every incumbrance. Complainant has not answered the trusts reposed in him. He has left the debts unpaid, and refuses to apply the notes and securities to the purposes for which they were appropriated. This respondent has spoken of having said mortgage foreclosed, and only regrets that he has not pressed the matter for his own protection.

32 and 33. The annual rent of the said property is about the same stated in the bill. The defendants under their just claims will have obtained of the results of their labor, time, money, and services, two-thirds for themselves and said Primrose for good and sufficient considerations, and will have restored complainant to his inheritance, and given him wealth and fortune, without risk or liability incurred by him.

34. The rights of respondent and his co-defendants were settled by the deed of February 15, 1851; upon that he insists. This respondent has no settlement to make with said complainant save on the basis of that deed. On that basis, he looks to a strict settlement with complainant. This respondent has received no benefit or advantage from said bond, nor, as he is informed and believes, have any or either of his co-defendants.

This respondent has none, and never had any of the papers sought to be discovered by the complainant save the deed of February 15, 1851. He will produce it at the hearing.

And this respondent says, that as to all the allegations and charges of the bill which relate to the conduct of Mr. John A. Campbell, and his communications with other parties to this suit, or the parties interested in the property, and to which respondent has not been able to answer from his own knowledge; he answers from information contained in the statement of facts made by the said Campbell,

which respondent appends hereto, and which he adopts as a part of this answer. He believes said statement to be true, marked Exhibit D. And in conclusion, this respondent says, that his case is simply this: He made a contract with certain parties, one of whom the plaintiff had invested with the title to the property in dispute with authority to recover the same for his own use in the plaintiff's name. This contract was for one-fourth part of the property involved in said suit. Respondent fulfilled with exactness all the terms imposed upon him by that contract, and this fulfilment contributed to the success of the suit. After the suit was ended there was a final settlement, and a deed was given to respondent for one-sixth instead of one-fourth upon certain considerations of equity, to which all the parties submitted.

That respondent entered into possession under that deed, and has advanced money, performed labor, and contracted liabilities upon the faith of that deed—all of which facts were well known to the plaintiff, and done at his instance and with his consent, sanction, and approval. That neither in his intercourse with Thompson, nor with Collins, nor with any other person, did this respondent make any misrepresentations, suppress any fact, nor enter into any confederacy or collusive agreement to the prejudice of any party. He denies that the said plaintiff at the time he made the deed of February, 1851, was misled, or was deceived, or that he labored under any misconception or error as to the subject of the contract, or the objects with which it was made, or the consideration on which it was founded. Respondent has performed all his contracts to the parties with fidelity, and relied upon their fairness and honesty to do the same by him. He denies all the charges in the bill which impute any fraud, combination, or confederacy. And now, having fully answered, this respondent prays to be dismissed with his costs, &c.

CHANDLER, SMITH & HERNDON,
and JAMES H. CAMPBELL,
Solicitors for the Respondent.

UNITED STATES OF AMERICA,
Southern District of Alabama.

Personally appeared before me, Richard B. Owen, Commissioner of Bail and Affidavits, appointed by the Circuit Court of the United States for said district, James Campbell, who being duly sworn on oath says, that the facts and allegations in the above answer, so far as the same are set forth from his own knowledge are true, and so far as they are set forth from information and belief, he believes them to be true.

(Signed) JAMES CAMPBELL.

Subscribed and sworn to before me, this 19th March, 1856.

RICHARD B. OWEN,
U. S. Commissioner.

Exhibits to Campbell's Answer.

Exhibit (A.)

Triplicate deed of the 15th February, 1851, marked Exhibit G, to Thompson's answer, and before copied, page 255 of Transcript.

Exhibit (B.)

Power of attorney from Thompson and Campbell to Collins and Cleveland, dated 20th December, 1851. Exhibit A to Cleveland's, and H to Thompson's answer, and before copied, page 259 (being without signatures).

Exhibit (C.)

William D. Primrose's ratification of the said power, dated 20th December, 1851, and marked Exhibit A, of Cleveland's answer, before copied, page 343.

Exhibit D.

A Statement of Facts.

In the latter part of the winter, or early in the spring of 1844, Drury Thompson, of Mobile, applied to me, as a member of the firm of Campbell & Chandler, to commence suits for him for the recovery of an interest in the Dubroca tract, and the Alexander Baudain tract of land, near to or in Mobile. He exhibited to me deeds from Sidney E. Collins, and a power of attorney to employ his name, and he desired the suits to be commenced on that title. I had some knowledge of these titles from suits in which I had been concerned. I knew that the proposed suits would be protracted, excite irritation, and were of doubtful issue. I knew that the evidence would extend to a variety of facts which would be difficult to obtain. I did not accord to his proposal with any facility, and finally, to be *rid of importunity*, I said to him that I would not look into the matter unless he paid me a fee of $1000; and, upon his repeating the words one thousand dollars with an expression of surprise, I said yes, and in gold. He asked me if he did this would I consent to take the suits? I told him I would examine them, and if I found grounds for them I would then bring them on the terms *he had proposed*. Much to my surprise he fulfilled my condition. I examined the two titles with much care, and concluded that the suit for the Dubroca tract could not be sustained.

I was informed that Collins was a minor when he gave his deed to Kitchen, and I believe that the probability of that fact decided me to bring the other suit. I had been concerned in suits which made it necessary to acquaint myself with the Spanish titles for this tract of land, and to consider all the conveyances of William E. Kennedy on record for any part of it; but beyond this, and without having any reference to the claims of any person claiming under the Collins title, I had never, to my knowledge, examined the subject mat-

ter of the proposed suit, nor had I agreed to bring it, and was free to reject it. The date of the payment to me was, I learn, in March, 1844. I do not know, and have never been informed, so far as I can remember, of the negotiations between Collins and Thompson, or Primrose in Texas, prior to the execution of the deed, nor of the representations made to Collins at that time, nor of the consideration paid, or agreed to be paid, to Collins. I have no recollection of having been consulted about the title by Thompson before his departure, nor of having given him forms to be used in acquiring it; and, if I did, it was simply as forms to make proper conveyances, having no relation to any suit. I was disengaged when he came to me, and accepted his retainer with hesitation.

It is proper to state that Primrose before this had spoken to me of such a claim, but I had refused any connection with, and have no remembrance of any conversation about the merits of such a suit. This was probably a year or more before. After my examination was concluded I had some explanations with Thompson, and imposed certain conditions upon which my employment was to depend. I told him that Collins was a necessary plaintiff, and whether, if the property was recovered, he (Thompson) was to have all and Collins none? I told him that I would not bring the suit unless Collins was to be substantially interested in its result. I told him that the parties were to have no concern in the management nor control of the suit, but that it was to be conducted as if Collins was the party in interest; and I explained to him my connections with the proprietors of adjacent property, and that I could have no contradictory interests with theirs. Thompson assured me not only that he would act liberally, but when I told him that would not do, he assured me that Collins should have a substantial interest in the suit, and that my other conditions should be regarded. I was party to no consultation, arrangement, nor suggestion to keep from Collins any fact or proceeding. I think it was during my examination of the title I learned that Primrose, and perhaps others, had some connection with the title, and Primrose furnished me with the facts concerning Collins set out in the bill.

Primrose informed me that before Collins had removed to Texas he had lived in Mississippi, Louisiana, and with his brother, about 100 or more miles north of Van Buren, in Arkansas, with his brother George (and, in referring to a map, that point was supposed to be in Missouri), and that he had not renounced, so far as he knew or believed, his American citizenship. Texas was then a foreign State. It may have been that this person designed to conceal from the *defendants* any knowledge of Collins, but I did not at any time suspect him or Thompson of a design to hide from Collins the pendency of this suit. In the early part of 1845 Collins came to Mobile in company (as I was told) with Col. Platt, an attorney employed by the defendants to obtain from him a release of his title and a dismissal of the suit, and I heard that some overtures for a compromise had

been made; but I do not recollect that any negotiations took place in Mobile, nor that any definite propositions were discussed.

My impression is that the claim was derided by the defendants, and they refused to deal with those who held it. The suit was spoken of in my intercourse with *this person* as freely as I was accustomed to speak to any one. I know of no reserve, nor occasion for reserve. I regarded him as a party having an immediate interest by my own stipulation, and was desirous to relieve the suit from the imputations freely cast upon it as a mere speculation. I advised that he should remain in Mobile during the examination of the witnesses; and that he should interest himself about the suit; should be consulted about the testimony; should be present at the hearing and decision. He was present, I remember, at the examination of a leading witness (H. V. Chamberlain), who was examined to nearly every issue in the case, and was much excited at the attack upon his legitimacy in that examination. He was consulted as to testimony, and I have a letter giving a detailed account of the earlier facts of the case as derived from his stepfather. He was present at the argument, and, I believe, at the decision of the case in the Circuit Court. I have no reason to believe, and I do not believe that, at the final decision, he was ignorant of any material fact, issue or argument in the case.

As early as June, 1845, he wrote me of "Thompson's confidence in his ultimate success."

During the pendency of the case in the Circuit Court I have no recollection of any conversation between Collins and myself relative to his connections with Thompson or the other parties. Thompson and himself, to all observation, were on terms of the closest intimacy. Collins, in speaking of the suit, spoke as having a definite and acknowledged interest, calling it "my suit." And as neither of the parties spoke to me of their affairs, and both seemed to be contented with their relations, I had no occasion nor disposition to pry into them. I had regarded the suit from the beginning as uncertain. It depended upon a great variety of facts, which minds might naturally view differently, and therefore I considered all discussions for a division of the judgment as premature, until the termination of the suit.

The first and only conversation I had with him before the affirmance of the decree of the Circuit Court in the Supreme Court, took place in January, 1849, and a reference to papers enables me to fix the dates of these conversations. This was nearly two years after the decree, and was two years after the hearing of the case in the Circuit Court. He came to my office in the evening, and found me alone. He spoke then at large of his feelings for Thompson, of his kindness, of the obligations he had received from him, and the esteem he had for him. He said, and reiterated, that he wished to be to him as a brother, and wished that—should act as brothers. Finding that these words had more than the ordinary import to him, I asked him what he meant by these words? He came to the point,

and told me he had given absolute deeds to Thompson for all the property in suit; that he had no evidence of an interest, and, if he were to die, his family would have none; and that he thought that a division of the property would be right, and that was what he meant. I told him that when Thompson had brought me the case, he had agreed that Collins should have a substantial share; that I had regarded his presence at Mobile as important to the case; that his own views were in the right spirit, and advised him to speak freely with Thompson. They came to my office at another *evening*, and either exhibited to me papers they had executed between them, or informed me they had been executed. I do not doubt the statement that they obtained from me a *rough draught* of their agreement, but I do not recollect any conversation that occurred there, nor should I have recollected (perhaps) that fact, except by a reference to papers.

The facts that I was told of the agreement, and saw their papers, are in my recollection. Perhaps during that evening in the absence of Thompson, or shortly after, Collins told me that Thompson declined to surrender the papers he had given in Texas, and expressed concern about it. When I saw Thompson I asked him why he had refused to give Collins these papers? Thompson replied that he was between two fires. That Collins on one side demanded new arrangements, and that he had given obligations to those concerned with him, and that he should be involved by them unless there was a general settlement, and he thought it best to keep all the papers till the end of the suit, and then he could act fairly with all. When Collins renewed the conversation to me, I stated to him what I understood to be the position of Thompson, and to his expressions of concern at the exposed condition in which he was placed, I told him that the suit was in his name, and the decree was or would be in his favor. That he could control that. That Thompson could never recover the lands except through him, that his deeds were good for nothing for that. That Thompson had agreed that his share should be a substantial one, and never had acknowledged what that share should be, and the evidence could always be had. That I thought favorably of Thompson, and believed he could be relied on. I recollect no other conversation with Collins, nor with Thompson on this subject, Collins did not ascribe to Thompson any fraud, misrepresentation, infidelity, concealment in these interviews. He did not charge any dishonesty in the negotiations in Texas. He left him in the same charge of the suit that he had always had.

These conversations were spontaneous on the part of Collins, and sought by him. They were deliberate and serious conversations occuring at my office, and evidently had a high degree of interest for him. It was at this visit from Texas that arrangements were ratified for the employment of Mr. Sargent to take charge of the case in the Supreme Court, and a confirmation in writing, at the suggestion of Thompson for our claim for service. These things

were done in the name of Collins, in accordance with the design to which I have first alluded, that the personal affairs of the various parties should not appear in the suit during its pendency. I supposed that Thompson and Collins had full explanations at this time, for Collins expressed no surprise, nor did he make inquiries further than I have stated. Thompson was left in charge as before. My inference was, that the agreement between these persons settled their own respective rights and pretensions, but that those of the other persons were reserved as Thompson had desired. I was not present at more than one, or perhaps two short conversations at which both were present, and I have afforded all that occurred then that I recollect. These did not relate to these open questions. *In August*, 1849, I received a letter dated Texas, an extract from which I give as containing the nearest approach to mistrust that ever occurred on the part of this person to Thompson in all my intercourse with him. "I failed in getting those old papers from Mr. Thompson after signing the one you drew up for me, so that he has them both. Write me whether you think I am running any risk in confiding in the honor of Mr. Thompson; if so, give me such advice as you think best for my safety, and I will remember you with gratitude. These are solicited out of no ill will, and are expected to be kept secret." I am entirely willing that my reply to this letter may be produced. In the month of February, 1851, Collins arrived, or was expected to arrive in Mobile. My impression is, that before his arrival, William F. Cleveland informed me of the fact, and requested me to appoint an evening of the week following his arrival, when all the parties in interest in the decree could come to my office and have a conference on the subject of the suit and their interests. He probably mentioned there had been some altercations between some of the Mobile parties, or I may have learned of those otherwise, and have blended that knowledge with this conversation. It may be, however, that this conversation arose after the arrival of Collins. Thompson had informed me at an early stage of the suit that Campbell and Cleveland were in some manner interested in his title, and had furnished him with the sums paid to me. They had never interfered in the management of the suit, nor can I call to mind any conversation whatever upon it, while it was in the course of preparation with them. They had never asserted to me any particular or special interest; they had never solicited of me any favor in the arrangement of the suit, or any settlement concerning the suit. They had never disparaged the claims of either of the parties, nor exalted their own pretensions. There was no consultation in reference to what should take place at the conference that one of them asked for; there was no combination nor concert, nor agreement to co-operate there. No distribution of parts, nor preparations of any character or kind for the meeting. They did not know what I should say, nor did I know what they or any one else would propose. The whole significance and import of all that ever took place between

these gentlemen (or rather Cleveland) and myself, was that those persons who claimed to have an interest in a suit I was conducting, should meet at my office to converse of the suit, and their rights and interest in that suit, and I appointed the meeting without a second thought about it. It is stated in the bill of this person in the Circuit Court of the U. S., at Mobile (Collins), that the interview took place the day of his arrival at Mobile, and that I communicated the facts to him. I do not recollect this to have been the case. If the meeting was appointed before his arrival, his arrival was delayed if the fact is as stated. I was a party to no scheme to surprise him, and he could not have been surprised in the regular course of any arrangements made by me. It was a matter of entire unconcern to me, whether the meeting took place at one time or another, and I have no recollection of having taken any share in convening the parties. The whole matter was a courteous compliance with a request, to which no suspicion nor mistrust attached. The parties all came to my office about the same time, and a winter's evening was spent in their affairs. In the course of it there was conversation about the suit, its condition and future course. The items of expense that had been incurred were spoken of. Cleveland mentioned with an approach to exactness the money paid out by Cleveland and Campbell, a sum between 2 and $3000. Thompson did the same (I think), but the sum I do not remember. But the whole expenses were not more than $3000 or $4000. I recollect nothing of exaggerations, nor that looked as if they desired to impose upon Collins or myself. For I knew but little of the expenses save those incurred in my favor, nor have I ever seen the accounts of expenses, and my impressions are derived principally from what I heard then. Attention was called to the interest that the parties had in the suit (perhaps by myself). After some conversation a reference to me was made for a suggestion, and a willingness to abide by my opinion expressed. My reply to what seemed the general wish, was that the property might be divided into six parts, and to assign two to Collins, and one to each of the others. Primrose expressed in strong terms his dissent. He said he was not satisfied, that the share of Collins was too large, that his title was a mere nothing, that the success of the suit was owing to the superior ability with which it had been conducted, that it never would have been brought but for him, that I had refused to take it, that he had thought of it for years before it was commenced, and could get none to take it. That Collins did not expect such a share. That he had said all he wanted was some negroes and cattle, and he would be satisfied. That he was willing to do more, but he was not willing to what I had proposed. He said more of the same kind, all of which was directed against the superior claims of Collins, and nothing was said by him as to the others, except that in the course of the evening he said he wished his share conveyed to Campbell and Cleveland. As these were the opinions that the others might hold, I reminded them that the suit was founded upon the title of

Collins, that without it there could have been no recovery, that I had prosecuted it as a good title, and my feeling of interest in the suit depended upon that fact, and that Primrose had no right to depreciate it. I asked what they considered the property to be worth? Thompson replied, $200,000. I said that when the suit was brought none rated it over 80 to $100,000. That every one of them would get under my proposal more than any one of them had anticipated. That they agreed that the services of one firm had exceeded all others in importance, and yet the smallest share was greatly above our compensation. James Campbell expressed satisfaction, Cleveland agreed, Thompson and Collins spoke in general terms. Thompson said "he had always said he would deal fairly with all, and he was now ready to do so;" Collins said he was willing to any fair division. The parties left my office in apparent good temper, and with a disposition to meet upon some such basis as I had suggested, but without having come to a definite agreement. I told *them as they left to consider upon the matter, and if I could be of service to come to my office.* The suggestion I made was designed for consideration, and was not presented in any absolute nor authoritative way. It was framed upon the conversations between Collins and Thompson, and a general knowledge of the obligations Thompson had entered into.

Collins had volunteered to share with Thompson, and had drawn writings to that effect, and the only inquiry was to harmonize the other engagements with that agreement. I suppose that Collins was aware of those agreements, if not their particular terms, at least their general effect. I did not suppose there was any conflict between Thompson and Collins. They were *agreed*, and Thompson's share was reduced in double the proportion of that of Collins under this suggestion. I supposed the relations between Collins and Thompson to be cordial and intimate. I have placed in this statement all that amounts to anything like mistrust that I ever heard of from Collins, and I knew that the relations between Thompson and some of the others were not friendly. Collins was at the time an inmate of Thompson's family. I had no interest, present or future, real or contingent, in the result of their deliberations, and my personal relations with neither one of the parties was of any such character as to sway me in the least. If I understand the complaint of the bill, it is that I did not volunteer advice to Collins to resist the contracts he had subscribed to repudiate his promises and obligations, and those that Thompson had given, and enable him to clutch the prize they had placed in his reach. That I should have discovered and unveiled the iniquities of Thompson and Primrose, and driven off Cleveland and Campbell. I had heard no account of any iniquity on the part of these persons in their intercourse with this person, but only that he wished to be to one of them as a brother. I might have supposed that after possession was recovered, and the adverse titles removed, that Collins would find the deeds he had made trou-

blesome. But I was not called on to take any such position. My relations to all these persons were the same. I had been employed for all to prosecute a suit against the representatives of Kennedy, and I was not employed, and could not have been, to manage controversies between them on the matter of a division of the spoils. Nor did any of them come to me with controversies, or subjects of litigation, but only to be present at an effort for friendly arrangements, and, as I supposed, to give such impartial aid as they might request of me. All the contracts which these persons had made, they had made on their own responsibility, and without my assistance, except as I have stated before in reference to that of 1849; and that was arranged in the mind of Collins before he spoke to me, and arranged between Collins and Thompson before they called on me about it together. I had never seen the agreements between Cleveland, Campbell, Primrose, and Thompson, nor have I seen them to this hour. I was only informed of the general result, and they were concerned together, as I understood or inferred, equally. These persons did not then suggest any reason for a discrimination as between themselves, nor had they ever expressed to me the existence of any inequality, and though there may have been various degrees of efficiency in the services rendered, none indicated any desire that a difference should be made between them on that account, nor did I consider that inquiry involved in the question on which my opinion was asked. I was aware of no fact in the capacity, circumstances, state of information of either of them, which placed him at a disadvantage in such a settlement.

The facts of the origin of the suit, I suppose, were stated with an approach to accuracy by Primrose. That Collins would have prosecuted it at great disadvantage, and probably would not have done so at all. At the time it was commenced none could have been found to pay $10,000, besides those persons, nor probably at a much smaller sum. They had incurred the expense, labor, anxiety, and reproach of the suit. I thought at the first that Collins was entitled to an important share of the recovery in the condition of the contracts as they appeared on their face. He had subsequently appeared in Mobile, and interested himself about the suit, and that led me to place a higher estimate on his claim to a modification of the original agreement. My opinion was made up with a view to approximate the claims, rights, expectations of all (including Collins). That I succeeded is shown by the fact, without any further intercourse with me, several days after this interview they adopted and embodied the suggestion, and never complained of the agreement until other causes of quarrel arose between them, and gave to this person a disposition and a motive to assail with railing accusations not only them, but others who had been so unwary as to be concerned with either him or them in this business.

I prepared no agreement the evening in question. Some short time after (one, two, or three days, or more), I received from Mr.

Chandler a message from some or all of those persons to draw up an agreement. During the morning that I received it, I prepared a rough draught, and gave it to James H. Campbell to make out three copies. *James H. Campbell* was then a student in my office. The share of Primrose was included in that of Campbell and Cleveland by the directions I received. These copies I learn were executed. I was not present at the execution, nor did I have any other conversation with those persons, or any of them, about the matter, during my continuance at the bar. *None* of the *parties* to the *existing suit* during that time ever discussed the agreement, obtained explanations, or gave explanations of it, nor indicated discontent, nor regret with any of its terms, nor intimated that I was in any degree responsible for its adoption, or that it was other than a judicious arrangement. Ten days after the date of this agreement, I received a letter from Collins (25 February, 1851) upon the subject of the account to be taken. I suppose it had reference to and was called for by some conversation at my office. It contains a detailed account of the rents of stores, vacant lots, shanties, woodyards, and warehouses on the property, and sales by Joshua Kennedy, with interest calculated, and charges the estate of Joshua Kennedy $172,800

It credits for building, rebuilding, filling up mud lots, and interest 48,472

Leaving a balance in favor of the plaintiff $124,328

It charges for sales north of St. Anthony Street, principal and interest besides 65,252

Joshua Kennedy's property is then stated to show its ability to meet the cash balance of $189,580

His estate in the city is assessed at $391,050

The Collins lot is to be deducted. Assessed at $125,000; but that being a low assessment ("*as the lot of Collins was worth* $200,000"), it was supposed the whole assessment was small, and that the estate, including Baldwin lands, worth $100,000, negroes, town and country property, the Kennedy estate was placed at 450 to $500,000. I attach a copy of this letter. These accounts inflamed the imaginations and appetites of my clients, and they listened with incredulity to all I said on the subject tending to reduce that balance. I represented to them in various conversations that the account was exaggerated, and could not be recovered; that the attempt to do so would lead to a protracted and fruitless litigation; that if they could collect the account, it would end in the total ruin of the children and estate of Kennedy; that Kennedy had secured the title at the Land Office, from the sale by the administrator of Joseph Collins (Innerarity), from tax sales; that he had enlarged it by improvements, and that he could not have been more than compensated by his receipts for his expenditures, and care and trouble about it, and recommended to them a liberal and forbearing settlement as suitable to

their circumstances. I spoke to them together and separately on the subject, and particularly to Collins. They insisted on the prosecution of the suit for the account. After a week or more of consideration and conversation, I told them then they would have to find other counsel. They offered me $5000 to proceed, and learned from me that mine was not a strike for wages.

Some days after they gave me full authority to conclude a settletlement on the *precise terms embodied in* the decree of April, 1851. 1st. A decree against Joshua Kennedy's representatives for the land in the Collins title. 2d. For the principal sum of the sale of the St. Louis lot to Campbell & Cleveland, or equivalent property. 3d. A waiver of accounts on either side. 4th. The defendants to pay costs. These terms I had all along advocated as affording a reasonable and conscionable settlement under the decrees. A decree, by consent, was drawn up between Col. Hallett, the executor of Joshua Kennedy and general representative and myself, and was communicated to Thompson. He took the alarm, lest the northern line of the south half of the Baudain tract would fall on the south side of St. Anthony Street, and that some desirable property might not be acquired. If that had been the case, it only have proved that there was no title for it in the claimants, for the line of the decree was the line of their title. But I did not concur in the judgment, or rather the fears of my client. I supposed the whole clamor simply designed to break up the settlement I had concluded on the authority of them all, and to get back again to the accounts. I was indignant, and expressed pretty strongly my temper at the transaction. I trust I did Thompson injustice. * * * * * * *

But the question arose to mind what was my duty? Was I to postpone the entry of the decree to satisfy Thompson, to break the agreement with the defendants, and set the matter adrift? My conclusion was to file the decree on the consent that had been given, and to inform Thompson that he might act as he should be advised. And this course was adopted. The parties made no objection to the entry after this to me.

Addenda.

A few days after the decree was entered, a proposal for the settlement of boundary was made to Col. Hallett at the instance of the parties. He replied the 14th May, assenting, but suggesting the propriety of a settlement between the Orange Grove Company and the Kennedys at the same time. Primrose, on the 19th May, for the Collins party, agreed in writing to the terms of Col. H. I left for Montgomery the latter part of May, and was absent during the most, if not all of June, from Mobile. The settlement was concluded upon during my absence. They took their decree, *settled their boundary* so as to *get the land they had so much coveted*, used the fact that the north boundary of their tract might cross St. Anthony Street under some constructions, and made that possibly the ground

for additional exactions which (I was told) were allowed. Thompson and Collins conducted these negotiations with the aid of Primrose, and perhaps Cleveland (I learn). I had no share in these last negotiations.

In July our firm received from Collins the following letter:—

MOBILE, July 2d, 1851.

MESSRS. CAMPBELL & CHANDLER:—

Sirs: Col. Hallett and myself have agreed on the following terms, to wit: The defendants to deed all south of St. Anthony from Royal to the river, and are to convey me the lot north of St. Anthony to State Street, and east of Hall & Carter's cotton shed. Both parties relinquishing all claims in the matter of accounts. Defendants to pay the costs of suit, for which you will please prepare the necessary deeds and papers, and oblige your friend, S. E. COLLINS.

About the same time I was told that Col. H. had agreed to give up to Cleveland an old bond, dated in 1833 or '4, which I was requested to receive properly cancelled. And I have some impression that some claims against Primrose were to be surrendered, but, as these did not go through my hands, I am not sure. In all these matters I fulfilled the exact instructions that were given. Nothing now remained but a final order.

In July I settled with these persons the fee of Mr. Sargeant, taking notes of Collins and James Campbell for $1500 each (with interest), payable in 1852 and 1853. They proposed to me the notes for interest of the same persons, and a bond for principal and mortgage for the principal and interest, payable in ten years, for my share of the fee of our firm; the bond and mortgage to be signed by all. This proposition was finally accepted.

While it was pending, a question arose upon some alley-ways that bounded a lot in which I had an interest. This lot had been sold by Joshua Kennedy, after he had received the deed of Collins, for $10,000, to Campbell & Cleveland, and had been transferred to the State Bank. They were entitled to the privileges of *bona fide* purchasers without notice. Their plea was proven at the hearing in 1847, and their title admitted, and a decree for the purchase money paid to Kennedy, alone sought for and obtained. The $10,000 mentioned in the decree of April, 1851, was designed to cover this price.

In 1849, the bank sold its landed property at auction, and, while there, Mr. Waring proposed to me to purchase this, as it seemed to be a favorable purchase. Mr. Cleveland gave us information of the buildings, and advised us to purchase at the price for which it seemed to be going. We purchased at about $10,700 upon a credit, my share being one-third. While in our possession, and under the management of Waring, some obstructions of the alley-ways by one of the Kennedy family occurred. I think that Meslier or Hastie put gates across them. Waring collected the facts relative to their dedication, and applied to me for counsel. He said that they were projected

by Kennedy before the sale to Campbell & Cleveland was made; that Cleveland and Campbell were informed of this when they purchased, by him; that these buildings were arranged with reference to their existence, with the knowledge and approbation of Kennedy; that they were opened and used in his lifetime, and with the consent of Col. Hallett, his executor and trustee, and they were marked upon the plans of the estate. He referred to Campbell & Cleveland as having given him information, and having expressed indignation at the conduct of these intruders, advising suits against them, and offering to give their testimony. Waring called them to me on one occasion in the street, and they confirmed generally his account. This is the only conversation I ever had with these gentlemen about these alleys in any connection whatever, and its *only reference* was to a suit against one of the Kennedy family; I think Hastie or Meslier. I subsequently advised Waring not to sue them, for that it was probable the title to the property would change by the affirmance of this decree, and I did not suppose my clients would raise any difficulty; that I placed no great estimate of my interest in that property is apparent from the fact that in May or June, 1851, I bargained with Waring to sell it finally, and *did sell it for some* 30 *per cent.* advance on the nett cost (after the accounts were made up of expenses and costs, and deducting the rents), upon a credit of ten years. I think that Waring and myself had agreed upon the terms of sale without any reference to the alley-ways, and without any guarantee of them or of the titles. Before this time, Waring (after my return to Mobile) informed me that my clients were disposed to raise trouble about them, and were only waiting to settle my fee on a long credit to do so. I spoke with Primrose in consequence, and concluded from his conversation that Waring was correct, that Primrose was at the bottom of the matter, and that he did not pretend to any color of right, but only upon a power to give trouble. I did not have any conversation with either of the others, and only learned their views from Waring. I addressed them a letter to bring the matter to an issue. I had no promise, pledge, assurance or intimation from any one of these persons (nor did I ever seek such from them) to maintain or aid my views on this subject, and was not affected in my conduct to any of them by the existence of such a question, and, until Waring informed me otherwise, had never calculated upon any obstacle whatever. In this question my interest was that, if Waring had expressed the wish, I would have suspended the execution of our contract of sale, which was made without any reference to this matter. Though I have no notion but what he would have purchased, even if they had been closed, at the same price he gave me.

My *fee being* on the subject arose from the fact, that I considered the conduct of these persons as illiberal and ungenerous. I had no claim on Campbell and Cleveland more than upon either of the others. The threat of indirect litigation was referred to one (only) of the

parties, *the mischief-maker* then, as I suspect now; one whose *circumstances* exposed him to a creditor's bill, and which was in the reach of my client, Mr. Waring. The fee simple of these alleys, in the absence of all claim, would have been worth from three to six thousand dollars. The conterminous blocks belonged to Collins & Co., and were equally benefited by them. Their contributory share was one-half. The one-sixth contributory share chargeable to my interest might have been $500 or $1000, or, without contribution from the conterminous proprietors, $2000.

When these persons connected with this suit applied to me to fill Mr. Sergeant's place at the Supreme Court, they mentioned a fee of $5000, and I agreed on my own proposal simply to secure him his fee, and my own expenses. I argued the case at Washington without the assistance or continuance of Mr. Sergeant. I refused a fee of $5000 to prosecute the account. I have attached, because I thought the account to be extortionate, and that it was unjust to do so. And I feel every confidence that had I asked a conveyance for one of the blocks of lots, together with the alley ways on either (or at least one of the) occasions, it would have been yielded.

Since the termination of the suit, Collins has threatened me with a gift of a lot either to myself or my son, as I was told by his present confederate (Primrose), and I have uniformly replied, that it could not be received. From the same person (Primrose) after the conclusion of all this business, I had a letter written in the names of himself and his partners, gratefully acknowledging the services they had received, thanking me for counsel and action contrary to their wishes; but they now found in accordance with their interests, and testifying their approval of all I had done in the cause. There were several months from the execution of the agreement of February, 1851, until the property was vacated by the representatives of Kennedy.

The accounts I have attached to this statement will show that the most extravagant opinions of the value of the recovery were entertained, and that the most minute and particular inquiries had been set on foot to ascertain the elements of value. These accounts were debated at my office, all of them being present, except perhaps James Campbell, who rarely interfered in the proceedings which I was connected, and whom I do not include in the terms "parties." I heard not a murmur of complaint, not a word of dissatisfaction during this time. When possession was surrendered, all the parties were understood to have taken possession in common, and I recollect, several months thereafter, I was requested to embody in a contract the terms on which they had agreed to hold it.

No one could deal with these persons without acknowledging a connection which was avowed by them, as the basis of all their own intercourse on the subject of this property. I feel confident that not a suspicion arose to my mind of the validity of their agreement;

nor that any of them were disposed to contest it, and no act of mine was designed for the purpose of adding to its authority.

Whatever intercourse I had with them was in the current course of business, and upon specific instructions applicable to the particular act. After the preparation of the deed in July, 1851, my intercourse was at rare and distant intervals, having a reference, perhaps, to some sale they desired to make, and that I should prepare the title-deeds, or give information of the title to their vendees. Their vendees were, in some instances, my own clients, who were referred to me as having exact knowledge of their business; Collins was, so far as I know and believe, as active in all this as any other, and apparently well satisfied with what was going on. My acquaintance with this person commenced in 1845. He was then a man of middle age, of more than the average force of character, experience of life, and with intelligence adequate to meet the circumstances of his condition. I supposed that he understood the significance of his words and of his conduct, and in dealing with him I gave credit to his words and conduct. I commenced this suit at the instance of a person who had his deed and his authority. When he arrived at Mobile, that suit was in the first stage of its preparation. No witnesses had been examined.

He became the inmate in the house of the person whom he charges to have obtained those deeds fraudulently, and appeared as his most intimate friend. He never, from that date till the summer of 1854, ever intimated any charge of the kind, nor impugned the validity, or propriety of any act of his to me, or within my information. He executed papers in 1849 which embodied *his own sense* of his relations to Thompson, irrespective of all others. I understood them as his sense of their relations, that they were to share equally as brothers. In 1851, he subscribed an agreement which placed the largest share of the outstanding obligations upon Thompson. He did this, so far as I know or believe, with full knowledge of their existence. The facts of the connections of these parties with the suit, or at least some of them, he had heard from Col. Platt before his arrival at Mobile. It was spoken of in the city gossip, it was thrown up at the argument of the case by the attorneys of defendants. I can hardly conceive of any ignorance on the subject on his part, irrespective of my direct allusions in the conversation of 1849, or of the explanations by Thompson. For months and years after this settlement he maintained a uniform conduct of approbation of the settlement, and of the conduct of the parties who have in any manner contributed to his good fortune, and to myself his expressions have been uniformly those of a man greatly obliged, and to others as reported to me of a man owing a heavy debt of gratitude. In 1854, a revolution seems to have taken place in his feelings, and a disposition arose to retract all material words he had spoken during the suit, and to deny the import of his important acts. He chooses to have his words interpreted by their contraries, or to be forgotten and

dealt with as unspoken, and to place all the responsibility of his conduct upon some of those who simply trusted to his fidelity and truth. This revolution as to myself has been effected by stages, and I propose now to exhibit the stages by which he has passed from the one extreme to the other since that time. The first intimation I have of the matter is contained in the following letter:—

Mobile, Feb. 8, 1854.

JOHN A. CAMPBELL.

Dear Sir: I have learned to day that Capt. Wm. F. Cleveland purposes visiting Washington City soon, it may perhaps happen that he may approach you upon matters in relation to matters between him and myself. This is to ask of you that you observe the *non committal* in any matters relating to me, until you reach Mobile, and afford me an opportunity of an interview with you.

Yours truly,

(Confidential.) S. E. COLLINS.

In March, 1854, I visited Mobile during a recess of the Supreme Court of the United States, and was informed at that time that Collins was laboring under mental derangement; about that time, he left the paper, marked B, with Mr. Chandler for me. In July, I came to Mobile from New Orleans, and, shortly before leaving there to join my family, I received the letter; extracts, which I will attach to this statement when I receive it from Mobile. The letter informed me that a suit would be commenced, and that I should be a party, but that it was designed to save me from the impertinence of the defendants.

He says he was deluded by my opinion of the value of the property. That I had said the shares of the other persons were only worth $80,000, and he was willing to confirm the settlement, and proposes a valuable present for my son, if I will procure the acceptance of his terms. He complains principally of Thompson, praises Primrose, and condemns Cleveland. I replied to none of this correspondence, and decided to have nothing to do with the controversy between the parties. I so informed James H. Campbell, my friend and agent, and requested him to inform Cleveland and Campbell of it. I subsequently saw Cleveland, and had some explanations with him of this letter, and informed him of the same conclusion. Subsequently to that visit (last spring) Thompson and Mr. Taylor, the atto. of Collins, were informed of the position I had taken. I considered this letter as presenting a threat of a *scandalous suit*, to which I was to be made a party, with allegations I knew to be untrue in reference to my own *conversations and acts*, and on the other side an offer of profit if I would embark in the interest of the writer. I determined to be as far from the controversy as possible. I have prepared this statement from my relations to the bar and the bench in the city of Mobile. Under ordinary circumstances I should leave

such charges as these to perish from their intrinsic extravagance, absurdity, and malevolence.

I should hope they are but morbid delusions of a diseased mind. But my relations to the bar and the bench entitle them in my judgment to open-hearted explanations of such of my conduct as may be the subject of attack in the form in which this comes. It is in this temper that I make this, without reference to the source or authority, or the circumstances of outrage under which they have been submitted. JOHN A. CAMPBELL.

Washington City, January, 1856.

THE DISTRICT OF COLUMBIA,
City of Washington.

Before the undersigned, a Justice of the Peace in and for said city, personally came John A. Campbell, a citizen of Alabama, who maketh oath and saith, that this statement is true so far as facts are stated on his own knowledge, and he believes to be true what is stated as such from the information of others, or his own belief. He has copied the several letters, save one, from copies, but he believes the exhibits and letters are substantially accurate.

J. A. CAMPBELL.

Sworn to and subscribed before me, January 26th, 1856.

PAUL STEVENS, *J. P.*

Exhibits to Statement of Facts.

Exhibit A.

Letter and statement of Collins to J. A. Campbell in relation to taking the account against J. Kennedy's representatives, and marked Exhibit I, to Thompson's answer before copied (see page 265).

B.

1. Collins thinks the property is his in good conscience and moral honesty.

2. Is perfectly satisfied with his atto's and their fee, and will pay it.

3. If others are not satisfied, and wish further arbitration, Collins respectfully asks the privilege to read the higher law to arbitrators, which is, "render to Cæsar the things that are Cæsar's," for Cæsar has his master. And wishes all parties concerned not to forget another higher law, which reads, "Do unto others as you would (wish, were you in his condition, and he in yours) they should do unto you." Collins heard of an expression of regret from one for whose good opinion Collins has a very high regard. The regret would freely give $10,000 if he had never had anything to do with the Collins case.

Now, if the regret arises from the merits of the case, or any act done, or consented to by Collins, he begs to know the cause. But if the regret is caused by bad deeds, or acts of other (wicked and designing) men, Collins begs leave to demur, for there is no law war-

ranting the punishment of Collins, or his interests for the wrongful acts of other men, unless it be the law of poor Tray; and the Collins case is not parallel. Tray had the choice of his company; Collins had not. One kind, respectful suggestion to attorneys of pl'ff: If your motive in undertaking cause of plaintiff was mainly the fee, the motive was sordid, and will perish with the fee. But if the motive was mainly to restore the injured orphan to his rights, and punish the guilty for his unholy acts, then your motive will live while this world shall last, and still live while God and eternity shall exist.

Yours in Christian meekness.

(*Addenda.*)

Citronelle, July 6th, 1854.

"HON. JOHN A. CAMPBELL,

Sir: In January, 1851, I arrived in Mobile from Texas, in bad health, and without money. The day I arrived I was told by you that some gents. wished to see me at your office, on that evening, which I did, and there learned for the first time that they claimed an interest in my property. They, or you, proposed that you should decide the amount each one was entitled to. You then said two-thirds, and each one was getting double as much as you were getting. Without any information, explanations, seeing of the papers, or having any knowledge what they, or any one of them, had done, except that Primrose had been in some way employed, I immediately signed the papers you made out, giving them two hundred thousand dollars worth of property, when you led me to believe from your remarks that I was giving them less than eighty thousand dollars. As soon as I had time to look into matters I found that your decision was very unjust towards me. They had incurred no responsibility, and the advance made in the prosecution was paltry compared with the amount you gave them. Cleveland done nothing, as I can find, save to bring James Campbell in, by imposing on Primrose and Thompson.

As soon as I understood the whole matter I became dissatisfied, and have repudiated the whole concern, and have given them notice that I claim the whole property as my own; though I am still willing to give them as much as you represented they were getting at the time I signed the papers.

I would still be willing to remunerate for all they have done for me; but $200,000 is more than I am willing to submit to. I have employed Smith and Chandler to bring suit to quiet my title. My object in thus frankly addressing you is, that you would try and have the matter settled without getting into law. I am willing to give them 4 stores on Front Street worth $20,000 each. This is my ultimatum. If you can have the matter settled on the terms above, I shall feel bound to make you a handsome present in way of a lot to your son. I am advised, in case I have to bring suit, to make you a party defendant, so that you may answer without being an-

noyed and insulted by insolent and impertinent question that the defendants and their counsel would in all probability propound to you. * * * * * * * * * * * * Thompson, from the first, has all the time sailed before me under false colors, pretending to be my best friend, has proved to be my worst enemy. Primrose, whatever others may say about him, has, from the first, acted (when he could) openly and gentlemanly, and taking the service of yourself and Chandler out of the matter, he is entitled to more praise, credit, and compensation, than all of the balance put together. * * * * * I hope, my dear sir, that this will be received in the friendly spirit in which it is sent. Yours truly, SID. E. COLLINS."

"To Hon. J. A. Campbell. Confidential."

(*Addenda.*)

The following letter will show the principle which directed the efforts to adjust with the defendants to the original bill in 1851.

Philadelphia, April 26, 1851.

MY DEAR SIR: Your kind favor of the 17th came duly to hand this morning.

I am glad to find from it that you are likely soon to have a final settlement of the Collins case, and that you will be enabled to make it upon terms which are just and fair.

There is a duty in all cases to exercise powers gained over others with equity, and I am very glad to find that our clients having gained a position of command, by your skill and persevering labor, have abstained from everything vindictive, though they have done themselves justice. * * * * * * * * * * *

Yours very truly JOHN SERGEANT.

J. A. Campbell, Esq.

Filed 21st March, 1856. GEO. E. HOLT, *Clerk.*

Motion.

Entered on rule docket 24th March, 1856, by complainant's solicitor.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.*

Complainant by his solicitors appears, and this cause is set down upon defendants Thompson and Cleveland's objection and plea for want of parties defendants only, for hearing at the next rule day.

K. B. SEWALL, *Solicitor.*

And which said motion was by written consent of the parties by their solicitors filed, continued and set down for hearing on the 28th July, 1856.

Filed 21st July, 1856. GEO. E. HOLT, *Clerk.*

And on the fifth day of May, A. D. 1856, came the complainant by his solicitors, and filed in the office of the Clerk of said Court,

his exceptions to the answer of the defendant James Campbell, as follows, to wit:—

Exceptions to Campbell's Answer.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.*

Exception taken by the complainant to the answer of James Campbell filed in this cause. That so much of said answer on the last page but one, commencing "and this respondent says, that as to all the allegations and charges of the bill, which relate to the conduct of Mr. John A. Campbell, and his communications with other parties." And terminating with "the statement of facts made by the said Campbell, which respondent appends hereto, and which he adopts as a part of this answer marked Exhibit D. He believes said statement to be true," as well as said Exhibit D, is impertinent, and ought to be expunged. In which particular the complainant humbly insists that said answer including said Exhibit D, is irrelevant, impertinent and unauthorized by any rule of pleading or practice known in equity proceedings in this Court. Wherefore he excepts thereto, and prays, that so much of said answer with the said Exhibit D, excepted to as aforesaid, may be expunged with costs.

K. B. SEWALL, *of Counsel for Compl't.*

Filed May 5th, 1856. GEO. E. HOLT, *Clerk.*

Application.

By the said complainant to Judge at Chambers for leave to amend his bill of complaint, to wit:

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.*
In Equity.

The answers having been filed in the above cause, but no replication having been filed, the complainant now applies to the Judge at Chambers for leave to amend his bill in a matter of date, by inserting the year 1849 instead of 1847 as the time when the deed to Thompson was made, to wit: by inserting 1849 in place of 1847 in pages 19, 20, 44 and 54, where the latter year occurs, and in page 21, inserting after the words "where he remained" the words ("excepting the visit to Mobile in 1849, before referred to,") the said amendment to be made on or before the next rule day.

K. B. SEWALL,
J. T. TAYLOR, *Sols. for Compl't.*

To Hon. John Gayle, Judge at Chambers.

Order.

Leave to Amend Bill.

Leave to amend according to the within application is granted, at Chambers, this 2d August, 1856. JOHN GAYLE.

Filed and entered 2d August, 1856.

And notice of amendment given defendants or their solicitors in writing, fully setting forth the amendments to said bill.

Marshal's Returns.

"Rec'd August 2d, 1856, and executed August 4, 1856, by serving the defendant's counsel with a copy.

C. M. GODBOLD, *U. S. M.*
By W. H. GASQUE, *D. M.*

Amendment to Bill.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Equity.

UNITED STATES CIRCUIT COURT,
Southern District of Ala.

The bill in this case is amended on the 19, 20, 44 and 54th pages by changing the figure 7, where it occurs in the year 1847 into 9, so that the year shall read 1849, instead of 1847, and on the 21st page by adding after the words "where he remained," the words ("excepting the visit to Mobile in 1849, before referred to.")

Mobile Aug't 2d, 1856.

K. B. SEWALL,
J. T. TAYLOR, *Def'ts' Solicitors.*

Filed 2d August, 1856, GEO. E. HOLT, *Clerk.*

Orders at Rules.

On the first Monday of August, A. D. 1856.

Order to reply to Answers of Thompson and Cleveland.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.*

This day came the defendants by their solicitors, and moved that the complainant do file replications to the answers of defendants Thompson and Cleveland, now on file, no exceptions being taken to said answers, which motion is allowed, and that the complainant or his solicitors have notice thereof, by order of Hon. Judge of said Court.

Entered of record, and notice thereof given to the solicitors of complainant.

Att. GEO. E. HOLT, *Clerk.*

Replication to Same.

And thereupon on the fourth day of August, A. D. 1856, came the complainant by his solicitors, and filed in the office of the Clerk of said Court, his replication to the answer of the said defendants Thompson and Cleveland, to wit: The replication of Sidney E. Collins to the separate answers of Drury Thompson and William F. Cleveland (defendants). This repliant saving and reserving all and all manner of advantage of exception to the manifold insufficiencies of the said several answers, for replication thereto saith, That he will aver and prove his said bill to be true, certain and sufficient, in the law to be answered unto, and that the said answers, and each of them of the said defendants, Drury Thompson and William F. Cleveland is uncertain, untrue and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied to, confessed or avoided, traversed or denied is true, all which matters and things this repliant is, and will be ready to aver and prove, as this Honorable Court shall direct, and humbly prays as in and by his said bill as amended, he hath already prayed.

K. B. SEWALL,
J. T. TAYLOR, *of Counsel for Compl't.*

Filed 4 Aug't, 1856, and notice of same given defendants' solicitors. Att. GEO. E. HOLT, *Clerk.*

Order at Chambers.

On defendants' objection to the bill for the want of parties, and on complainant's exceptions to the answer of the defendant James Campbell filed herein, to wit: At Chambers, August 5, 1856, (as of July 28.)

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Equity.

The following entry is ordered to be made in this case, to wit: This cause coming on to be heard at Chambers by agreement of counsel upon the objection for want of parties taken by the defendants, Thompson and Cleveland in their answers, and also upon the exception of the complainant to the answer of James Campbell, and counsel being heard, the objection for want of parties was withdrawn and abandoned by the counsel for defendants, and the exception of the complainant to the answer of James Campbell being considered by the Court, the same is overruled.

July 28, 1856. J. GAYLE, *Judge.*

The opinion of the Court overruling said exceptions delivered this day, and is on file, and the above order entered on the minutes, August 5, 1856. Attest, GEO. E. HOLT, *Clerk.*

Consent of Counsel.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.*

At Judge Gayle's request, the case that was to be taken up to day, will be postponed to Monday next, the 28 inst., to wit: Sidney E. Collins vs. Thompson *et al.*, as to parties, &c. Mobile, July 21, 1858. Yrs. K. B. SEWALL,
J. T. TAYLOR, *Att'ys for Complainant.*

Messrs. Chandler, Smith and Herndon, Att'ys for Def'ts.
(Signed) CHANDLER, SMITH and HERNDON,
Att'ys for Def'ts.

Filed 21st July, 1856. GEO. E. HOLT, *Clerk.*

Opinion.

Opinion of the Hon. John Gayle, on overruling exceptions to the answer of James Campbell.

COLLINS
vs.
THOMPSON AND OTHERS. } At Rules.

This case came up on exception to the answer of James Campbell, one of the defendants, the ground of exception is, that the defendant has appended to his answer, a written statement of Judge Campbell, and made it a part thereof. In 1844, a suit on the Chancery side of this Court, was commenced by the complainant against the heirs of Joshua Kennedy and others, to recover a valuable piece of land in the city of Mobile. Judge Campbell was employed as his solicitor, to prosecute and manage the suit, and under his supervision and direction it was conducted to a successful termination in this Court in 1847, and in the Supreme Court in 1851. Before the commencement of the suit, during its pendency, and after its conclusion, the complainant executed sundry deeds and conveyances in relation to the land sued for. The bill is filed to have these deeds and conveyances set aside and cancelled, on the ground that they were obtained by fraud, imposition and circumvention. Judge Campbell is alluded to in the bill as being connected with the defendants, and as aiding them in the perpetration of the fraud. After the bill was filed, he (Judge Campbell) drew up a written statement, giving a history of the case, so far as he had been connected with it, and a statement of facts, which had come within his knowledge, and under his observation. He was not made a party to the suit, though charged as confederating with the defendants. The defendants are required by the bill to answer all its allegations "according to the best and utmost of their several and respective knowledge, remembrance, information and belief."

The defendant, James Campbell, having answered the bill as to

the facts coming within his knowledge, proceeds to answer as to his information and belief as follows: "And this respondent says as to all the allegations and charges of the bill which relate the conduct of Mr. John A. Campbell, and with his communications with the parties to this suit, or of the parties interested in the property, and to which this respondent has not been able to answer from his own knowledge, he answers from information contained in the statement of facts made by said Campbell, which respondent appends hereto, and which he adopts as a part of his answer, he believes said statement to be true marked Exhibit D." This part of the answer is excepted to as impertinent. If the defendant had answered after reading the statement of Judge Campbell that he had no knowledge, information or belief in relation to the matters charged against him in the bill, his answer would have been false. And if on the contrary he attempts to give his information and belief as derived from the statement, no general reference to it would be so precise, definite, and satisfactory as the statement itself. The case of Parker vs. Fairlee and Others, 1 Eng. Ch. R. 297, is very much in point, and substantially decides the question under consideration.

In that case the defendant in answer to an allegation in the bill, that some cotton which had been sent by him to the plaintiff was of inferior quality, and that from certain affidavits and certificates made by experienced persons, he believed the cotton to be of superior quality, and set forth the affidavits and certificates in *hœc verba*. This part of the answer on exception was referred to the master for impertinence, who sustained the exception and reported it to be impertinent. The defendant, Fairlee, thereupon filed exceptions to the master's report, which upon argument were allowed by the vice-chancellor, and the certificates and affidavits permitted to stand as a part of the answer. The case was afterwards affirmed on appeal. I think the information derived from the statement of Judge Campbell cannot be so well understood as by the paper itself, and it was, therefore, properly made a part of the answer. I cannot permit the occasion to pass without remarking on some of the features of the bill, and the direction which has been given to it. Judge Campbell is one of the Justices of the Supreme Court of the United States, and by a permanent arrangement has been assigned to preside in the Courts of this Circuit. A fraud and conspiracy of great turpitude is charged upon the defendants in the bill. It professes to unravel a scheme entered into by them many years ago to deprive the complainant of his estate. He not only makes Judge Campbell perform a conspicuous part in the plot, but holds him out as the master spirit that conducted it to a successful consummation. A State Chancery Court is regularly held in the City of Mobile, presided over by a chancellor of learning and ability, where all the questions of fraud made in the bill could have been thoroughly investigated and properly and correctly decided. An attentive perusal of the bill will convince any impartial mind that the charges against Judge

Campbell betray a feeling of malice and ill will on the part of the complainant, and the bringing the suit in the Court where he is the Presiding Judge, leaves but little room to doubt that he was prompted so to do by a desire to insult, mortify and defame him. I am impressed with the opinion, that the proceeding is an assault on the dignity of this Court, and that its tendency is to bring upon it public contempt and public ridicule. I have hesitated whether it would not be proper to strike the case from the docket. It is not very clear, however, that I have this authority, and for the present I refrain from exercising it, but I feel it my duty to remark that I can perceive no justification for the solicitor in bringing the bill in this Court, fraught as it is with scandalous and criminal accusations against the presiding judge, and that doing so was grossly indelicate and unprofessional.

J. GAYLE,
Presiding Judge.

I omitted to give an opinion on the first objection to the exception that it was not taken in proper time, as I deemed it more important to decide the question on its merits. J. G.

Filed 5 August, 1856.

Attest, GEO. E. HOLT, *Clerk.*

Afterwards, to wit, on the eighth day of August, A. D. 1856, came the said complainant by his solicitors and filed in the office of the clerk of said Court his replication to the answer of the defendant James Campbell, as follows, to wit:—

Replication to Campbell's Answer.

The replication of Sidney E. Collins, complainant to the separate answer of James Campbell, one of the defendants to the bill of complaint of the above named complainant against Drury Thompson, William Cleveland, and the said James Campbell, defendants.

This repliant saving and reserving to himself the benefit of the exception already specially taken, as well as all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied to by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is, and will be ready to aver and prove as this Court shall direct, and prays as in and by his said bill he has already prayed.

K. B. SEWALL,
J. T. TAYLOR,
of Counsel for Complainant.

Filed August 8th, 1856. GEO. E. HOLT, *Clerk.*

And notice of same given defendants' solicitors. *Clerk.*

the facts coming within his knowledge, proceeds to answer as to his information and belief as follows: "And this respondent says as to all the allegations and charges of the bill which relate the conduct of Mr. John A. Campbell, and with his communications with the parties to this suit, or of the parties interested in the property, and to which this respondent has not been able to answer from his own knowledge, he answers from information contained in the statement of facts made by said Campbell, which respondent appends hereto, and which he adopts as a part of his answer, he believes said statement to be true marked Exhibit D." This part of the answer is excepted to as impertinent. If the defendant had answered after reading the statement of Judge Campbell that he had no knowledge, information or belief in relation to the matters charged against him in the bill, his answer would have been false. And if on the contrary he attempts to give his information and belief as derived from the statement, no general reference to it would be so precise, definite, and satisfactory as the statement itself. The case of Parker vs. Fairlee and Others, 1 Eng. Ch. R. 297, is very much in point, and substantially decides the question under consideration.

In that case the defendant in answer to an allegation in the bill, that some cotton which had been sent by him to the plaintiff was of inferior quality, and that from certain affidavits and certificates made by experienced persons, he believed the cotton to be of superior quality, and set forth the affidavits and certificates in *hæc verba*. This part of the answer on exception was referred to the master for impertinence, who sustained the exception and reported it to be impertinent. The defendant, Fairlee, thereupon filed exceptions to the master's report, which upon argument were allowed by the vice-chancellor, and the certificates and affidavits permitted to stand as a part of the answer. The case was afterwards affirmed on appeal. I think the information derived from the statement of Judge Campbell cannot be so well understood as by the paper itself, and it was, therefore, properly made a part of the answer. I cannot permit the occasion to pass without remarking on some of the features of the bill, and the direction which has been given to it. Judge Campbell is one of the Justices of the Supreme Court of the United States, and by a permanent arrangement has been assigned to preside in the Courts of this Circuit. A fraud and conspiracy of great turpitude is charged upon the defendants in the bill. It professes to unravel a scheme entered into by them many years ago to deprive the complainant of his estate. He not only makes Judge Campbell perform a conspicuous part in the plot, but holds him out as the master spirit that conducted it to a successful consummation. A State Chancery Court is regularly held in the City of Mobile, presided over by a chancellor of learning and ability, where all the questions of fraud made in the bill could have been thoroughly investigated and properly and correctly decided. An attentive perusal of the bill will convince any impartial mind that the charges against Judge

Campbell betray a feeling of malice and ill will on the part of the complainant, and the bringing the suit in the Court where he is the Presiding Judge, leaves but little room to doubt that he was prompted so to do by a desire to insult, mortify and defame him. I am impressed with the opinion, that the proceeding is an assault on the dignity of this Court, and that its tendency is to bring upon it public contempt and public ridicule. I have hesitated whether it would not be proper to strike the case from the docket. It is not very clear, however, that I have this authority, and for the present I refrain from exercising it, but I feel it my duty to remark that I can perceive no justification for the solicitor in bringing the bill in this Court, fraught as it is with scandalous and criminal accusations against the presiding judge, and that doing so was grossly indelicate and unprofessional.

J. GAYLE,
Presiding Judge.

I omitted to give an opinion on the first objection to the exception that it was not taken in proper time, as I deemed it more important to decide the question on its merits. J. G.

Filed 5 August, 1856.

Attest, GEO. E. HOLT, *Clerk.*

Afterwards, to wit, on the eighth day of August, A. D. 1856, came the said complainant by his solicitors and filed in the office of the clerk of said Court his replication to the answer of the defendant James Campbell, as follows, to wit:—

Replication to Campbell's Answer.

The replication of Sidney E. Collins, complainant to the separate answer of James Campbell, one of the defendants to the bill of complaint of the above named complainant against Drury Thompson, William Cleveland, and the said James Campbell, defendants.

This repliant saving and reserving to himself the benefit of the exception already specially taken, as well as all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied to by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is, and will be ready to aver and prove as this Court shall direct, and prays as in and by his said bill he has already prayed.

K. B. SEWALL,
J. T. TAYLOR,
of Counsel for Complainant.

Filed August 8th, 1856. GEO. E. HOLT, *Clerk.*

And notice of same given defendants' solicitors. *Clerk.*

(*Order.*)

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.* } At Chambers.

Time for Testimony extended and Commissioners for Compl't Appointed.

In this case on application of complainant, it is ordered that the time for taking testimony be enlarged until the fourth Monday of December next. And it is further ordered that A. J. Requice, Leonard F. Summers, and Frederick S. Blount, or either of them, be authorized to take any testimony on the part of complainant in this district, and the clerk of the Court is hereby authorized to insert their names in any commissions to be issued at the instance of the complainant in this cause. Mobile, Oct. 29th, 1856.

JOHN GAYLE, *Judge, &c.*

Filed 7 Nov., 1856. GEO. E. HOLT, *Clerk.*

(*Order.*)

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, *et al.* } At Chambers, 18 Nov., 1856.

On application made by the defendants, it is ordered that (on special cause shown) the time for taking testimony for defendants be enlarged until the fourth Monday of December, A. D. 1856. It is further ordered that Richard B. Owen be authorized to take any testimony on the part of the defendants that they may require in this district, and that any commissioner of the Circuit Courts of the United States, for bail and affidavits, or Charles Wallack, or Philip Clayton, of Washington City, be authorized to take the testimony of the Hon. John A. Campbell or Mr. James H. Campbell, and the clerk of the Court issue the commissions accordingly.

JOHN GAYLE, *Judge, &c.*

Filed 18th Nov., 1856. GEO. E. HOLT, *Clerk.*

1856, *April Term, Cause continued.*

And afterwards, to wit, at a term of said Circuit Court begun and held in and for said district at Mobile, on the fourth Monday of December, A. D. 1856, the following order was made in said cause, to wit:—

(*Order.*)

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, *et al.* }

Upon application of the defendants' solicitors to enlarge the time for the further taking of testimony in this cause. It is ordered by the Court that the same be extended to both parties for ten days from this order, 22d December, 1856.

And afterwards, to wit, on the ninth day of January, A. D. 1857, being a day of the term of the said Court last mentioned, the following order was made in said cause, to wit:—

(*Order.*)

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, *et al.*

Upon application of the defendants by their solicitors, it is ordered that the entry made on the first day of the present term of this Court in the said cause, be now so amended as to extend the time granted the defendants for the taking of testimony therein, from the date of said entry to the first Monday of February, 1857. And it was ordered that the said cause be continued.

Order of Extension.

And on the twenty-ninth day of January, A. D. 1857, on the application of both parties in said cause, the time for taking testimony therein, until the sixteenth day of March, 1857, by Hon. John Gayle, Judge.

Same.

And, on the fourteenth day of March, A. D. 1857, the time was further extended until the 22d of March, A. D. 1857.

And, on the sixteenth day of March, A. D. 1857, the following affidavit was filed by the complainant in the said cause, for the further extension of the time for taking testimony therein, to wit:—

Affidavit for Further Extension.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Equity, pending in said Court.

UNITED STATES OF AMERICA,
For the Southern District of Alabama, ss.

Sidney E. Collins, the complainant in the above entitled cause, being duly sworn before the Clerk of the above named Court, says: that he is informed that William D. Primrose, a material witness, to whom complainant had filed interrogatories, and for whose examination upon the interrogatories and cross-interrogatories filed, a commission was duly issued, and placed in the hands of F. S. Blount, Esq., a Commissioner, to be executed, after giving his testimony in part, has refused to go on and complete his deposition, and has made his objections in writing to said commissioner, who has returned the same with the commission and interrogatories to the Court to be disposed of, which are yet undisposed of. And he further says, that since the last enlargement of time for the taking of testimony, made on the application of this deponent, interrogatories have been filed

on the part of the defendants, which make it necessary that this deponent should examine other witnesses in the cause; that on inquiry he has ascertained that four of those witnesses reside in the State of Texas, and one of them, Dr. John C. Kuhn, resides at Reinick, in the Canton of St. Gall, in Switzerland. That he is advised that the testimony of these witnesses will be material testimony for him in this cause, and to obtain that of the latter will require at least some three months. And he further says, that this application is not made for delay. Wherefore, he respectfully asks that the time for taking testimony be enlarged until the first Monday of July next, or to such other time as the Court may deem necessary to enable him to procure the depositions above referred to.

SIDNEY E. COLLINS.

Subscribed and sworn to before me, this 16th day of March, 1857.

GEO E. HOLT, *Clerk.*

(*Order.*) At Chambers.

The parties in this case have till the meeting of the Court on the second Monday of April, to take depositions.

16 March, 1857. JOHN GAYLE, *Judge.*

Filed 16 March, 1857.

Attest: GEO. E. HOLT, *Clerk.*

(*Order.*) At Chambers.

To complete Testimony of Primrose.

COLLINS
vs.
DRURY THOMPSON *et al.*

In this case, a commission heretofore issued to F. S. Blount, Esq., to take depositions, and the said commissioner having returned the deposition of William D. Primrose as incomplete and not fully taken. It is ordered that the commission be returned to the said commissioner with directions that he proceed to complete, and take fully the deposition of said witness.

11th April, 1857.

JOHN GAYLE, *Judge, &c.*

The following named commissioners were also appointed on behalf of complainant, to take testimony in said cause by Hon. John Gayle, Judge, &c., to wit:—

Additional Comm'rs for Compl't.

Alphonse Hurtel, of Mobile, William Chambers, Charles F. Cleveland, William Leigh, Samuel S. Smith, James Ingram, N. T. Gaines, Lorenzo P. Sherwood, and William F. Goddard (or either of them), of Texas.

Same for Def't.

And for defendants, L. E. Symonds, T. L. Bayne, of New Orleans.

S. G. Newton, J. L. Hewitt, of Texas (or either of them), and John Y. Gholson, of Virginia.

Attest: GEO. E. HOLT, *Clerk.*

And afterwards, to wit, at a term of the said Circuit Court begun and holden in and for the said District, at Mobile, on the second Monday of April, A. D. 1857, the following order was made in said cause, to wit:—

Order to complete Testimony.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.*

This day came the defendants by their solicitors, and on their application, it is ordered that the time for taking, completing, and returning the testimony under commissions in said cause be extended until Wednesday next, the fifteenth of April, 1857. After which time, a motion will be made to publish all testimony now taken in the said cause.

Petition filed by defendants to prove certain exhibits in the said cause, to wit:—

Petition by Def'ts to prove Exhibits.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

IN THE CIRCUIT COURT OF U. S.
Southern District of Alabama.

To the Honorable the Judge of the said Court:—

The petition of the defendants respectfully show, that they are desirous of proving, as exhibits in this cause, the following letters of the plaintiff to Drury Thompson, dated in 1844 and 1845; dated Feb'y 25, 1844; 6 May, 1845; 1 Aug't, 1845, 18 Aug't, 1845; 3d Nov. 1845. Also the following letters of said Collins dated in 1847, 1848, 1849, 1850 to the same person; letters dated 21 May, 1847; 27 July, 1847; 27 Oct. 1847; March 3, 1848; 7 May, 1848. 30 Sept. 1848; 5 Dec'r, 1848; 24 Feb'y, 1849; 26 April, 1849; 8 March, 1850; 18 March, 1850; 9th Aug't, 1850; 7 Sept. 1850; 18 Nov'r, 1850. Also the following letters from the same person to Wm. F. Cleveland, dated the 28 June, 1853, and one to the same person dated 15 May, 1855, to the said Cleveland. Also the following papers: A power of attorney, dated 23d April, 1851, of Sidney E. Collins in favor of Drury Thompson, dated Mobile.

Petition of Defendants to prove Papers.

Also the following papers, to wit: 4 papers executed by Sidney E. Collins, dated 13th January, 1844, in favor of Drury Thompson, and which are described in his answer, with the indorsement on the power of attorney, dated 13th January, 1849; one deed, dated 13

January, 1849, executed by Collins to Thompson. Ratification of Wm. D. Primrose of the power of attorney, dated 20 December, 1851. Also the various letters particularly set forth in the exhibit to the answer of James Campbell as written either by Sidney E. Collins, Wm. D. Primrose, John Sergeant, &c. They respectfully request your Honor to make an order to allow your petitioners to make these proofs either by affidavit before a commissioner of the Court, or *viva voce*, on the hearing, conformably to the practice of the Court, and subject to all just exception.

CHANDLER, SMITH & HERNDON,
Sol'rs for Defendants.

Personally appeared before the undersigned, Clerk of the said Circuit Court of the United States, Drury Thompson, one of the defendants in said cause, who being duly sworn says, that the statements contained in the foregoing petition are true to the best of his knowledge and belief. DRURY THOMPSON.

Sworn to, and subscribed before me this fourth day of April, 1857.
GEO. E. HOLT, *Clerk.*

(*Order.*)

Let the papers and documents mentioned in the foregoing petition be proved before the master, on giving notice to the opposite party.
7 April, 1857. JOHN GAYLE, *Judge, &c.*

Filed 7 April, 1857. GEO. E. HOLT, *Clerk.*

Notice by Defendants to prove Papers.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.*

IN CIRCUIT COURT U. S.,
at Mobile.

To the Plaintiff or his Attorneys:—

You are hereby notified, that in pursuance of an order from the Hon. John Gayle, dated 7th April, 1857, we shall, on the 22d instant, at 12 o'clock M., proceed before the Master, Richard B. Owen, at his office in Mobile, to prove the several letters, papers, deeds, &c., referred to and mentioned in the petition of the defendants to the Hon'l the Judges of said Court, filed the fourth of April, 1857, and of which you were served with a copy, and to which the order of the said Judge refers. You can attend if you think proper.

CHANDLER, SMITH & HERNDON,
Def'ts' Solicitors.

(*Marshal's Return.*)

"Rec'd April 21, 1857, and executed same day by serving K. B. Sewall with a copy of this notice.

C. M. GODBOLD, *U. S. M.*"

Notice given by the defendants for the production of certain papers at the hearing.

Notice by Defendants for Production of Papers.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

IN CIRCUIT COURT UNITED STATES,
at Mobile.

To the Plaintiff:—

Take notice, that upon the hearing of this cause you are required to produce the power of attorney executed to Wm. F. Cleveland and yourself by Drury Thompson and James Campbell, bearing date in the month of December, 1851, and which is in your possession. Also the paper executed to you by Drury Thompson in January, 1844, at the time a deed, power of attorney and bond were given to him in Texas by you, and which paper is described in his answer. And if this is not done, the Court will be moved to compel their production.

CHANDLER, SMITH & HERNDON,
Sol'rs for Defendants.

(*Marshal's Return.*)

"Received 6 April, 1857, and executed same day on John T. Taylor by handing him a copy.

C. M. GODBOLD, *U. S. M.*"

And afterwards, to wit, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, being a day of the term of said Circuit Court, begun and holden in and for said District at Mobile on the second Monday of April, A. D. 1857, and first herein written, the following order was made in said cause, to wit:—

(*Order.*)

SIDNEY COLLINS
vs.
DRURY THOMPSON *et al.*

This day came the parties by their solicitors, and the complainant filed the following petition and affidavit for a continuance, etc., to wit:—

Petition, &c.

Petition, &c., filed by the complainant at April Term, 1857, for an enlargement of the time for taking testimony, etc., in the said cause.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

In Equity. Circuit Court of the United States, Fifth Judicial Circuit, Southern District of Alabama.

Petition for Further Time by Complainant.

SOUTHERN DISTRICT OF ALABAMA, *ss.*

Sidney E. Collins, the complainant in the above entitled suit, being duly sworn before the Clerk of said Court, deposes and says: that he is now informed, and believes it to be true, that Joshua Kennedy, in the year 1838, made a deed in favor of his children which embraced all the land in the square, bounded north by St. Anthony Street; south by St. Louis Street; west by Water Street, and east by Commerce Street, in Mobile, excepting the lot of one hundred feet square, which he had previously conveyed to Campbell and Cleveland. That this deed divided said square with this exception, among his five children, and neither provided for, nor recognized any alleys whatever, but embraced and divided the entire square with the exception aforesaid, among his said children, that this deed, he the said Kennedy, described as witnessed by Wm. R. Hallett and George N. Stewart. And this complainant is informed that said deed was drawn for said Kennedy, and under instructions from him, by George N. Stewart, Esq., then his counsel and attorney, and from a map of said property made by Charles Delage (a surveyor for said Kennedy), who is now deceased. He is further informed, that said map embraced also the square bounded by St. Anthony, St. Louis, Royal, and Water Streets, and showed a division of this square by a proposed street running from St. Anthony to St. Louis Street, about fifty feet wide and named Jones Street, but that said map showed neither alley nor street across the square bounded by St. Anthony, St. Louis, Water and Commerce Streets, or on the north or east side of said Campbell and Cleveland's lot, or any part of it.

He is further informed that said map was drawn from measurements made by said Delage, and under the directions of said Kennedy and was made subsequent to 1835, and previous to said Kennedy's death. And he further says he is informed the said deed referred to is an exhibit to the answer of the executors of Joshua Kennedy in the suit of The Heirs of Wm. E. Kennedy *vs.* The Heirs and Representatives of Joshua Kennedy, which was determined in the Chancery Court at Mobile, which is referred to in this complainant's bill, a copy of which exhibit is hereto attached. And he further says, that he is informed that neither said map of Delage, nor said deeds, have ever been placed upon record, but that they exist, and are in the possession of the executors or heirs of said Joshua Kennedy, or some of them, and can only be produced and proved by an examination of said persons or some of them. And he further shows that when interrogations were filed to said Stewart, Hallett, Meslier, Hastie, Aiken, and Joshua Kennedy in his cause, he had no knowledge or information of the existence of the said map and deeds, or any of them, nor had he any information that could lead him to suppose their existence, but that all the information above detailed he has obtained since the 14th day of the present month. That he is ad-

vised by his counsel that said evidence is material upon the hearing of this cause, and negatives the assertion that said Joshua Kennedy who conveyed the lot at the northeast corner of St. Louis and Water Streets to Campbell & Cleveland, intended either to convey to them any alley ways, or to recognize any alley ways around said lot.

And he further says that it is less than nine months since the joinder of issues in this cause, during which time this complainant, aided by his counsel, has used great diligence to have the same prepared for a hearing upon the merits. That he has interposed no obstacles to a speedy preparation, but has done all he could to facilitate it. That he has no desire to delay the hearing, but wishes time to obtain all the evidence that is material to a full and fair determination of his rights.

He is advised that the testimony already taken is voluminous, and has been obtained in a cause of this magnitude with unexampled dispatch, and he states that the defendants are already enjoying the benefits of the deed which he seeks to set aside, and that no injury or inconvenience, as he believes, can result to them from a reasonable enlargement of the time for publication. And he further says, that all the testimony on his part, for which interrogatories have been filed, has not been taken, and some of it cannot be obtained short of two or three months.

Wherefore he objects to a publication of testimony at this time, and asks that the time for taking testimony be enlarged for three months, and that said cause be continued, or if the testimony now in be published, that it be without prejudice.

And that this complainant have leave to examine the heirs, representatives, and attorneys of the late Joshua Kennedy, as to the existence and contents of the maps and deeds above referred to, and said cause be continued. SIDNEY E. COLLINS.

Sworn to and subscribed before me this 17th day of April, A. D. 1857. GEO. E. HOLT,
Clerk U. S. Cir't Ct.

(*Exhibit marked Exhibit R.*)

GEORGE N. STEWART—Dear Sir: I have executed three deeds of gift of land in Mobile, all bearing date the tenth of November, eighteen hundred and thirty-eight.

These three deeds I herewith hand you in trust, and I now deliver them to you as escrows, and upon condition, I desire you will dispose of them as follows: One of them is in favor of Glorina Walker and Mary Kennedy, children of Joseph E. Kennedy, and is witnessed by William Hallett and yourself. This deed you will please have recorded in the office of the Clerk of the County Court of Mobile County forthwith, and deliver the same to Robert L. Walker, the husband of Glorina Walker, for the benefit of his wife and her sister. This deed is to take effect at once. One other of the said

deeds is in favor of my five children, and is also witnessed by William Hallett and yourself. It is prepared and intended as a deed of gift, to be delivered to the parties for whose benefit it is made, in case of accident to myself. In case of my decease without making any other express disposition of the same property, then after my decease you will deliver the said deed to my said children after causing it to be recorded, and in such case I wish the delivery now thereof made to you to relate back for *the* benefit to the present time.

But in case I should recover from my present sickness, and demand the same of you, you will then surrender it back to me, and deliver it. In such case it shall be considered as not having been in any manner delivered. My true intent and meaning being, that my property shall be theirs in case of my decease without otherwise disposing of it, but still that it shall be under my control, and subject to be annulled, if I shall so determine hereafter. The other is a deed of gift in favor of Joseph Kennedy, Martha Kennedy, and Delphine Kennedy, my nephew and nieces. It is also witnessed by William Hallett and yourself. This deed you will retain until the youngest of my said nephew and nieces shall attain full age, then you will in procuring from them, or those who shall represent their rights, a full and valid release on their part of all claims, demands, or pretences against me or my estate, of whatsoever nature, deliver to them the said deed, after causing it to be recorded. It is now handed to you as an escrow, and it is to take effect only when full and complete releases are made as aforesaid. It being my true intention that they shall have the said property as a gift from me, provided no claims are set up by them against me or my estate, and provided all such are released. JOSHUA KENNEDY. [SEAL.]

Mobile, March 13th, 1838.

A true copy from the records. O. S. JEWETT, *Register.*

Filed April 17th, 1857, and ordered to be made a part of the record. GEO. E. HOLT, *Clerk.*

Motion overruled.

And in this cause the motion to enlarge the time for taking testimony and for continuing the cause, made by complainant, being heard and considered, it is ordered and adjudged that the same be overruled.

Testimony published, etc.

And on motion of the solicitors for the defendants, it is ordered that the testimony taken in chief by complainants and defendants be published, and that this cause be set down for hearing at the present term of the Court.

Cause set for hearing.

Afterwards, to wit, on the 20th day of April, A. D. 1857, being another day of the term of said Circuit Court last mentioned, the following order was made in the said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

This day came the parties by their solicitors, and by consent it is ordered that this cause be set down for hearing on Thursday next, the 23d instant.

Notice by Defendants to return unexecuted Commissions in said Cause.

U. S. CIRCUIT COURT,
In Chancery at Mobile.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.*

Mr. Collins, or his solicitor, K. B. Sewall, is notified that they are required to return into the Clerk's office the unexecuted commissions to take the evidence of witnesses in Galveston, Texas, and also of the witness in Europe. CHANDLER, SMITH & HERNDON,
April 20, 1857. *Solicitors for Defendants.*

Marshal's Return.

"Received April 20th, 1857, and executed the same day by serving K. B. Sewall with a copy of this notice.

C. M. GODBOLD, *U. S. M.*
By WM. H. GASQUE, *D. M.*"

Notice by the Complainant to Defendants to produce Deed at the Hearing of the said Cause.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

In Equity.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Judicial Circuit, Southern District of Alabama.

GENTLEMEN: You will please take notice that you are required, on the hearing of the cause, to produce the original deed made by Joshua Kennedy to James Campbell and William F. Cleveland, for a lot of land at the northeast corner of St. Louis and Water Streets in Mobile, and bearing date the 31st day of January, 1835, which deed is also executed by Susan Kennedy, wife of the said Joshua, that the same may be read in evidence. Dated Mobile, April 22d, 1857. Respectfully, K. B. SEWALL,
Of Counsel for Complainant.

To Messrs. Chandler, Smith & Herndon, of counsel for defendants.

Marshal's Return.

"Received and executed April 23d, 1857, by serving Chandler, Smith, and Herndon with a copy of this notice.

C. M. GODBOLD, *U. S. M.*
By WM. H. GASQUE, *D. M.*"

Papers relating to the Testimony of William D. Primrose, but not attached thereto.

W. D. Primrose's Objections to testify.

To F. S. BLOUNT, Esq., Commissioner in the cause of S. E. Collins *vs.* Thompson, Wm. F. Cleveland, and James Campbell, defendants, in the Circuit Court of the United States of America, at Mobile.

I, William D. Primrose, do protest to answering the interrogatories and cross-interrogatories filed to me in this cause, for the following reasons:—

1st. That I was of counsel to these defendants in the prosecution of the original suit of S. E. Collins *vs.* Hallett and Walker, executors of J. Kennedy and the heirs of Joshua Kennedy, deceased; that I consider my relation to said Thompson, Cleveland, and James Campbell as that of counsel to his clients, and therefore decline answering any interrogatory or cross-interrogatory which calls for a disclosure of the facts transpiring between us during that relation, or to disclose any facts which I acquired while holding that relation, and which I acquired by virtue of that relation. And I request that you return the said commission into Court, so that due proof may be taken before the Court in regard to my relation to the defendants as counsel aforesaid.

2. And I further object and protest against answering as aforesaid, because on the 23d and 26th days of January, 1857, I caused F. S. Blount, Esqr., Commissioner, to serve notice to the counsel of the defendants, Messrs. Chandler, Smith and Herndon, to produce *to produce* to the said commissioner the deeds, papers, documents, letters, &c., inquired about in the interrogatories and cross-interrogatories in the cause, and other documents, papers and letters as by reference to the said original notices, which I pray the commissioner to append hereunto for the examination and consideration of the Hon. Court, and that I cannot answer satisfactorily or truly in my judgment, without the deeds, papers and documents; and letters are produced to the commissioner for my examination and inspection, to refresh my memory. All of which is herewith respectfully submitted. (Signed)

Mobile, 6 Feb'y, 1857. WM. D. PRIMROSE.

This paper referred to the Judges of the Circuit Court.

6 Feb'y, 1857. F. S. BLOUNT, *Commissioner.*

Filed 6 Feb'y, 1857. GEO. E. HOLT, *Clerk.*

Notice of Def'ts as to Primrose's Testimony.

SIDNEY E. COLLINS
vs.
MARY THOMPSON *et al.*

IN CIRCUIT COURT U. S.,
Of Southern District of Alabama.

In Chancery.

The defendants are informed, that William D. Primrose, a witness for the plaintiff, has pleaded some privilege as an attorney to decline answering the interrogatories and cross-interrogatories in the above stated cause. The defendants are not aware of any such connection in so far as they are concerned as he sets up, and take this occasion to waive any claim upon him to withhold any answer, and expect him to answer fully to both the interrogatories and cross-interrogatories. They consent that the papers returned by Mr. Blount, the Commissioner, in regard to Wm. D. Primrose, may be opened, and that another commission may issue forthwith, on the application of the plaintiff; and they offer every facility for compulsory process to compel his attendance. They offer to produce before the commissioner, any paper alluded to in any interrogatory propounded to the witness. This was substantially told to John T. Taylor, Esq., yesterday, and this formal offer is made to avoid all mistake.

CHANDLER, SMITH and HERNDON,
Def'ts' Solicitors.

To Plaintiff or his Attorneys.

(*Marshal's Return.*)

Received 9th April, 1857, and executed same day by handing a copy of this notice to K. B. Sewall, Esq., and a copy for J. T. Taylor, Esq., left at his office.

C. M. GODBOLD, *U. S. M.*

Notice of Compl't as to Primrose's Testimony.

SIDNEY E. COLLINS
vs.
D. THOMPSON *et al.*
In Equity.

IN CIRCUIT COURT OF THE UNITED STATES,
Southern District of Alabama.

Gentlemen: In answer to your notice received last evening, we reply, that we have no influence or control over the witness Primrose, and no connection with his refusal to testify. On the contrary, as soon as we were informed by Mr. Blount of the fact, and that he had returned the commission and interrogatories with the witness' objections to the court, we verbally informed Judge Gale of the fact, and our desire, that he would take the matter up at Chambers at once and dispose of it, but understood him to decline on the grounds, that the objections could only be disposed of by the Court, when it

should regularly meet. We are ready now, as we always have been, to have the matter taken up by the judge and disposed of.

We shall insist that there is nothing in the objections made by the witness to excuse him from answering, and that he be required to go on and answer forthwith. What facilities you have offered, or what obstacles presented, for the examination of said witness, we understand will appear from the commissioner's return. We have interposed none, and shall interpose none, to the examination of any witness.

You are also notified that you will find with the Commissioner, Mr. A. Hurlet, all the original papers referred to in the interrogatories to J. J. T. Wilson and others, who are to be examined alone as to the handwriting of the same, where you can inspect them, and can cross-examine as to them orally before said commissioner, if you wish so to do. We make this offer, not that we admit that there is any validity in your exceptions or any of them, but that you may have no pretence to object. Mr. Hurlet has been requested to close the examination this week, if possible, April 10th, 1857.

Respectfully, K. B. SEWALL,
of Counsel for Compl't.

To Messrs.
CHANDLER, SMITH and HERNDON, *Solicitors for Defendants.*

(*Marshal's Return.*)

Rec'd 10 April, 1857, and executed by handing the defendants a copy of this notice. C. M. GODBOLD, *U. S. M.*

Filed 10th April, 1857. GEO. E. HOLT, *Clerk.*

W. D. Primrose's Notice for Papers.

Mobile, April 13th, 1857, 3 o'clock P. M.

To Messrs. Chandler, Smith and Herndon, attorneys for the defendants Thompson *et al.* in the cause of S. E. Collins vs. them, pending in the Circuit Court of the United States for the Southern District of Alabama, at Mobile, I herewith furnish you through the U. States Marshal at Mobile, copies of the interrogatories and cross-interrogatories filed to me in the cause of Sidney E. Collins *vs.* Thompson, Cleveland and James Campbell, pending in said court. I now request that you will furnish me, or the com., F. S. Blount, Esq., by 8 o'clock to-morrow morning, all the papers, deeds, documents, or other papers in writing in your possession or under your control, mentioned or named in the interrogatories or cross-interrogatories filed to me in this cause, to enable me to testify and explain on my testimony more fully than I can do without them. I shall close my testimony to-morrow morning at 10 o'clock A. M., before the said commissioner. Your ob't s'v't, &c.,

WM. D. PRIMROSE.

To Messrs. Chandler, Smith and Herndon, Att'ys, &c., Mobile, Alabama.

(*Marshal's Return.*)

"Rec'd and executed April 13th, 1857, by serving Chandler, Smith and Herndon with a copy.

C. M. GODBOLD, *U. S. M.*"

Testimony.

The following is the testimony introduced by the parties, in the order in which the same was introduced and read upon the trial, the commissions to take the depositions taken by commission and interrogatory, and the captions and certificates of the commissioners (at length) thereto, are omitted in the transcript, by consent of the solicitors of both parties.

Attest, GEO. E. HOLT, *Clerk.*

1*st Testimony for Complainant.*

(No. 1. Testimony of William D. Primrose.)

The said Primrose, a witness on behalf of the complainant in said cause, in answer to the direct and cross-interrogatories propounded to him on oath says. (Direct interrogatories and answers thereto.)

Primrose direct 1st. Are you acquainted with the parties to this suit? If yea, how long have you known each of them?

Answer. I am acquainted with the parties to this suit. I have known complainant since 12th January, 1844, and the defendants over twenty years.

Int. 2. Thompson, in his answer, alludes to a contract made between him, yourself and Cleveland in 1842, in regard to complainant's estate. If you were a party to such contract, please state what led to it, what was its object, and on whose information and opinions it was based?

Answer. I boarded with Robert Williamson, in Mobile County, in 1835, who was one of the Judges of the Court of Probate of Jackson County, Mississippi, at the time of the probate of the will of Joseph Collins, father of the complainant.

He gave me information about the affairs of the estate of Collins, that induced me subsequently to make examinations of some of the titles of Collins' heirs in Mobile. Which examination satisfied me, that the heirs of Collins could recover some valuable lands in Mobile.

The contract was based mainly, I think, upon my information and opinions, and upon such information and opinions as Thompson and William F. Cleveland had gathered in relation to the subject matter. I continued these examinations until 1839. I was a party to said contract. In July, 1839, I formed the idea of buying out the Collins' heirs, or making some arrangement with them in regard to their title to said lands, and in connection with William J. Vandegraff, Esq., attorney-at-law, then residing in Mobile, and Charles White, also of Mobile. We agreed that we should be equally interested in the speculation. I purchased a pony from John K. Collins, in the latter part of July, 1839, and went to Mississippi in search of the

heirs of Collins. I there learned that both George and Sidney E. Collins had removed to Texas. I obtained a copy of the will and probate of Joseph Collins, and deeds and other papers of record, from the Probate Court of said Jackson County, Mississippi, and returned to Mobile after an absence of three weeks, making searches and examinations. After my return—a few months—Vandegraff and White both declined having anything further to do with the matter. I tried in vain various persons to engage them in the speculation till 1842, who had means to meet the necessary expenses. I could find no one who would ever embark with me. In 1842, prior to the contract between Drury Thompson, Wm. F. Cleveland and myself, I mentioned the matter to Drury Thompson. He agreed to go into the speculation. We then agreed to get Wm. F. Cleveland to go in with us. After conversing with him he agreed to do so. The object of the contract was to buy out the title of the heirs, and recover as much of the property belonging to them as we could.

Int. 3d. Before the making of that contract, had any of the parties to it obtained any legal advice or opinions in regard to the title of Collins to any land in Mobile? If yea, state whose advice or opinions were obtained, the result thereof, and whether they were communicated to any or all of said parties, and as to what land.

Answer. I had obtained the opinion of Wm. J. Vandegraff, Esq., in 1839, upon a statement of facts presented to him by me, and in the fall of 1839 an opinion in writing from Daniel Chandler, Esq.; also upon a statement of facts furnished him by me, and an opinion of Isaac T. Preston, Esq., of New Orleans, on the law of marriage in West Florida while the country was under Spanish dominion. These opinions were favorable to the title of the heirs of Collins. My impressions are that I communicated to Thompson and Cleveland these opinions, though I cannot say positively. The lands referred to are a portion of those recovered by Sidney E. Collins.

Int. 4. How long was the subject of said contract under consideration among you before the contract was made? How long had you considered it?

Answer. I do not remember how long the subject of the contract was under consideration before it was made; perhaps a month. I suppose I had considered it about the same time.

Int. 5. Do you know of a visit of Thompson to Texas in January, 1844? If yea, state the object of said visit, and under what advice it was undertaken, and whether Cleveland was informed thereof.

Answer. I do know of a visit of Thompson to Texas in January, 1844. The object of the visit was to buy out the title of S. E. Collins to lands in and near Mobile, and all other lands he owned in the United States. It was undertaken under the advice of the parties to the contract. Cleveland was informed thereof.

Int. 6th. Was any legal advice taken by any of the parties before said visit was made, with reference to the object of it, and the mode of accomplishing it? If yea, whose advice was so taken?

Answer. No legal advice was taken that I am aware of.

Int. 7th. When and how was it ascertained that Sidney E. Collins was living at or near Liberty in Texas?

Answer. Some time after making the contract in 1842, Drury Thompson addressed a letter to some one in Shreveport, La., and in reply learned that Sidney E. Collins and his mother resided near Liberty, in Texas, and that George E. Collins was dead.

Int. 8th. Why did Thompson go rather than Cleveland? Was the subject of this visit discussed among you? If yea, state all that was said by Thompson and Cleveland on the subject.

Ansr. Thompson and Collins were known to each other when boys, and, by our agreement of 1842, the deeds, if procured, were to be taken in the name of Thompson. The subject of the visit was discussed among us, and I cannot remember all that was said. Our conclusions were that Drury Thompson was the proper person.

Int. 9th. What amount of money did Thompson take with him on that visit? Did he take with him any letter of credit? If yea, to what amount, and for what purpose?

Answer. I do not know what amount of money Thompson took with him. He said he had a considerable amount. He took with him a letter of credit from Dr. S. Mordecai. The amount of credit was unlimited, so as to enable him, if he found it necessary, in procuring the titles of Collins to the lands mentioned in our agreement of 1842.

Int. 10. If Thompson had any other object than to see Mr. Collins in his visit to Texas in January, 1844, please state what it was.

Answer. He took with him an old judgment or claim in favor of Campbell & Cleveland against Lann & Talbot, formerly of Mobile, who were then residing in some part of Texas.

Int. 11th. Who accompanied Thompson in this visit to and from Texas, what route was taken, and was it or not the most direct way to and from Liberty, or was some other preferable?

Answer. I did. I know of no more direct route by water. We went from Mobile to New Orleans, thence to Galveston, Texas, and up the Trinity River to Liberty. I know of none other preferable.

Int. 12th. Did you witness the first meeting of Thompson and Collins in Liberty? If yea, state particularly Thompson's manner and language to him.

Ansr. I did. I do not recollect anything unusual in their meeting, or in his language or manner, more than is customary at the meeting of two persons who, as boys, had known each other in Mobile.

Int. 13th. Did Thompson and yourself put up at the same house in Liberty? If yea, did he spend his nights with you, or where did he spend them while you were there?

Answer. We did. He spent all his nights with me except one. Thompson and Collins went off deer hunting together, and where he

spent that night I do not know. We spent the last night with Collins at his house near Liberty.

Int. 14th. Do you know what representations were made by Thompson to Collins that induced the latter to execute to Thompson the deed and papers there made between them? If yea, set the same forth fully and particularly, whether occurring in your presence, or at any time communicated to you by Thompson.

Answer. I do not know what representations were made by Thompson to Collins that induced the latter to execute to Thompson the deed and papers there made between them. I was not present. They went off hunting together, and returned next day; I think in the afternoon. I heard no conversation between them on the subject, except what related to the execution of the papers. Thompson subsequently told me that he agreed to give Collins the amount named in the deed, or one-half of what he, Thompson, made. No doubt much more was said by Thompson to me, but, having given the substance above, I do not recollect all the particulars. It is the result of all the conversations I have had with Thompson in reference to the transactions with Collins at that time, as near as I can now recollect.

Int. 15th. What representations were made by you to Collins, before the making of said deed, as to the position or means of Thompson, and why did you make them?

Ansr. I told Collins, in Liberty, that Thompson was worth from forty to sixty thousand dollars. I thought he was. He had been in the drug business in Mobile, doing, as I thought, a heavy and profitable business for some years; had dealt or traded in lands in and near Mobile; lived in good style; was industrious and economical; he had been clerk of the County Court of Mobile County—a very profitable office at that time—and was reputed in Mobile to be a man of means and property. I made the representation to Collins to satisfy him that Thompson was a man responsible for any contract he might make with him. The statement was made before the execution of the papers.

Int. 16th. What consideration was paid by Thompson for the deed made by Collins to him in January, 1844? State all that you know on this subject, and what other papers were then executed.

Answer. There was no consideration that I know of paid by Thompson to Collins for the deed. The next day after the execution of the deed, Thompson handed Collins fifty dollars, but whether as a present or not, I do not know.

Int. 17th. Why was this deed made to Thompson, and not to Cleveland or to yourself? Where was this matter decided upon; in Mobile or in Texas?

Answer. It was made to Thompson, according to our agreement, in 1842, in Mobile. By this agreement or contract, Thompson was to hold the property under the deeds, for the benefit of himself, Cleveland and myself.

Int. 18th. Who drew up the deed and papers that were executed by Collins to Thompson in January, 1844? State all that you know of the origin of these papers and deeds, by whom they were drafted, by whom copied, and where and when were the drafts made, at whose request, and for what purpose.

Ans'r. Thompson drew up the deeds and papers executed in Texas in 1844 by Collins and wife to him. One deed and one power of attorney were taken by him from original drafts of John A. Campbell, Esq., and the original drafts of the balance were, I think, in my handwriting. Thompson copied them, and made, what he thought, the necessary additions to them. Those in the handwriting of John A. Campbell were made, I suppose, in Mobile. I do not know when. Those drafted by me were made by me at the residence of Gen. Frank Hardin, where we stopped at Liberty. Does not know at whose request Mr. Campbell's drafts were made, or for what purpose; my impression is for the purpose of securing the title of Collins to Thompson. Those made by me at my own instance, or at the request of Thompson. My impressions are that I told Thompson, a few days before we left for Texas, to get the proper papers drawn to secure the titles to the lands we intended purchasing. These are my best recollections, not having the originals before me.

Int. 19th. Did Thompson make any statements to Collins as to his (Thompson's) having business in other parts of Texas? If yea, set forth all the statements he so made.

Answer. He did. He stated that he had business in other parts of Texas in the collection of some debts; among them one against Lann & Talbot. Do not recollect further particulars.

Int. 20th. How soon after the execution of the papers by Collins, did you and Thompson leave Liberty; and how and in what way did you return to Mobile?

Ans'r. The next morning after the execution of the papers. We returned by way of Anahuac to Galveston. We there took a small schooner (from Anahuac) to Galveston; then by steamers to New Orleans and Mobile.

Int. 21st. Was there any understanding, before yourself and Thompson left Mobile for Texas, as to bringing a suit upon the title of Collins in case you could get the control of it? If yea, who was to be your attorney or attorneys, and was he or they aware of your enterprise and purpose? Set forth the truth fully.

Answer. There was such an understanding before we left Mobile for Texas. Messrs. Campbell and Chandler were to be our attorneys if we could get them. My impressions are that they were aware of our enterprise and purpose. I told Mr. Chandler.

Int. 22d. Prior to your going to Texas in 1844, had you paid any fee for a legal opinion with reference to any anticipated defence that might be set up against the title of Collins? If yea, to whom did you pay such fee, and for what purpose? Were Thompson and Cleveland parties to it, or advised of it?

Answer. After the passage of the act of the Alabama Legislature of 1843, reducing the limitation of actions for the recovery of lands to ten years, I asked John A. Campbell for his opinion as to the construction of the act. I asked him what his charge was? He said nothing. Thompson and Cleveland were not parties. Do not recollect whether I advised them or not. My object in getting this advice was in reference to the Collins title and some others. I laid five or ten dollars on his table and left the office.

Int. 23d. Before your visit to Texas, in 1844, had any lawyers been employed on behalf of Thompson, Cleveland and yourself, with reference to prosecuting a suit upon the Collins title, in case you got the control of it? Or had any lawyers expressed a willingness to be employed in such cause? If yea, name the lawyers and set out the agreement or understanding.

Ans'r. None that I am aware of. I had occasionally spoken to Campbell and Chandler; sometimes to one and sometimes to the other, in regard to the Collins titles in Mobile. Most of these conversations were mere casual conversations. Mr. Chandler expressed a willingness to be employed if they could get the fee I offered, $25,000. No agreement or understanding that I am aware of, beyond what is above stated, was made before the visit to Texas.

Int. 24th. On the return of Thompson and yourself to Mobile from Texas, did Thompson, yourself and Cleveland have any consultation as to Collins' title, and the prosecution of suit upon it? If yea, set forth fully and particularly all that was agreed to and done in reference to the matter up to the time the suit was brought.

Answer. We had. I do not now remember all that was agreed to and done in reference to the matter up to the time suit was brought. I recollect that we agreed to employ Campbell and Chandler at $25,000, and retain Dargan P. Lockwood. And we did employ Campbell and Chandler at $25,000, conditional, and $1000 cash. Prior to the termination of the suit, the conditional fee was reduced to $20,000. It was reduced on account of Thompson believing, as he said, that the lawyers (Campbell and Chandler) were also to bring suit for one half of the Dubroca claim, which was contained in the deed of Collins made in 1844, as I think. In the month of February or March, 1844, Wm. F. Cleveland came to witness, and agreed with him that if he would have a notice served on James Campbell not to pay the Branch Bank at Mobile the back rents due on property, owned one-half by the bank and one-half by James Campbell, that he would obtain from James Campbell one thousand dollars, and pay it over to Thompson to pay the cash fee to Campbell and Chandler. The whole of said property, from which rents were said to be due, was embraced in the deed of 1844 from Collins to Thompson. I thought it a fair transaction, and so did Cleveland, as the tenants would have to account to Collins for the same rents on the recovery of the suit of Collins for our benefit. I told him I would do so. I got Mr. Campbell (John A.) to draw the notice. He done so, and I

placed it in the hands of the United States Marshal, or a copy of it, to be served on James Campbell or his agent. I do not remember whether James Campbell was in Mobile or not. I have no recollection of seeing him, as I had nothing to do with him in this transaction. After the service of said notice, as I was told by Cleveland it was served, Campbell paid over to Thompson the $1000, as I understood, and he paid the same over to John A. Campbell after it was changed into gold, perhaps.

Int. 25. Which of you was authorized to employ counsel, and what agreement was made with any, and what counsel? Set the same forth.

Answer. Drury Thompson was authorized to employ Campbell and Chandler, and agreed to and did pay them one thousand dollars in gold, and was to pay $25,000 in case of success in the suit. This sum of $25,000 was afterwards reduced to $20,000 in the manner stated in answer to 24th direct interrogatory. Never saw the agreement. I understood it was in writing as to the conditional fee.

Int. 26th. Was there any agreement between yourself, Thompson and Cleveland, as to the division of the spoils? If yea, set forth who were to share in them, and in what proportions.

Ans'r. There was an agreement as to our interests. It was made in 1842. Thompson, Cleveland and myself were to share one-third each after paying all the expenses, and Collins ten thousand dollars, named in the deed, if we succeeded.

Int. 27th. For whose benefit was the suit to be prosecuted? Thompson's, Cleveland's, and your own, or Sidney E. Collins's?

Answer. I was not present when the contract was made for the prosecution of the suit. I understood it was to be prosecuted for the benefit of Thompson, Cleveland, myself and Collins. My understanding was, that if we recovered the suit, we were to pay Collins ten thousand dollars, mentioned in the Texas deed of 1844.

Int. 28th. What lawyers were employed for Thompson, Cleveland and yourself?

Answer. Campbell and Chandler were employed to prosecute the suit for all, including Collins, as I understood.

Int. 29th. Do you know anything of the payment of one thousand dollars by Thompson to John A. Campbell, prior to the commencement of the suit by Collins in 1844? If yea, state all that you know of it, when it was paid, who advanced the money, and on what inducements.

Answer. Thompson told me that he had paid Campbell and Chandler, or John A. Campbell, one thousand dollars in gold, as a cash retainer; and John A. Campbell told me that he had received one thousand dollars in gold from Thompson. Cleveland told me that if I would cause a notice to be served on James Campbell not to pay the Branch Bank at Mobile the back rents due on property—one-half owned by the bank, and one-half owned by said James Campbell—that he (Cleveland) would obtain from James Campbell one

thousand dollars, and pay it over to Thompson to pay the cash fee to Campbell and Chandler. It was paid in February or March, 1844, as well as I recollect.

Int. 30th. Did you, prior to the 27th day of April, 1844, see a written notice purporting to be from Sidney E. Collins to James Campbell? If yea, state when and where you saw it, by whom it was prepared, what was its purport, how it originated, what was its object, and by whom it was served, and how you obtained your knowledge of the matter.

Answer. This question is fully answered in my answers to the 24th and 29th interrogatories as far as I recollect.

Int. 31st. When and why was James Campbell admitted to a share in your speculation, and what change was thereupon made in your agreement of 1842? Annex to your answers hereto true copies of the agreements between Thompson, Cleveland, and yourself, made in 1842 and 1844.

Answer. In part I refer to the written agreement marked A, enlarging Cleveland's interest for the benefit of James Campbell, and the agreement of 1842, marked B, between Thompson, Cleveland, and myself, of which copies are hereto annexed. There was only one other consideration, except what the papers show, that was a verbal agreement between Mr. Cleveland and myself, that he would advance me money to compromise my old debts. After the execution of the paper marked A, Cleveland told me to come and get a thousand dollars, and commence taking up my debts, which I never got. More I might have got, if applied for then.

Int. 32d. Did these agreements embrace the whole of the estate included in the suit of Collins *vs.* Kennedy's heirs and executors, or only a part of it; if a part, how much, and what part?

Ans'r. They embraced the whole of the estate, as may be seen by reference to the agreements.

Int. 33d. At the date of these agreements was there any understanding among the parties to them as to what interest, if any, Collins was to have in the matter? If yea, set forth what was said or understood on the subject, and whether Collins was to be excluded, or to have any and what share in the result.

Answer. At the date of the agreement I understood and expected that Collins would be satisfied with the ten thousand dollars, the amount named in the deed of 1844, made by Collins to Thompson at Liberty, in Texas. I do not recollect any other understanding, except what the papers show. No doubt much was said, the result being that we expected to pay Collins the ten thousand dollars, otherwise provision would have been made for him in our agreement, I presume.

Int. 34th. Why was Collins kept in ignorance of the suit brought in his own name till 1845? Was there any agreement, discussion, or understanding among you on the subject? If yea, set forth the same fully and particularly.

Answer. I caused John A. Campbell to locate him in the bill as a citizen of the State of Missouri, so that the defendants would not be able to find him and buy him out. I left it to Thompson, Collins' agent, to advise him of whatever he thought necessary in the premises. There was an agreement and understanding between Thompson and myself that the residence of Collins should be concealed from the defendants if possible. At that time we wanted Collins to have nothing to do with the suit, and let us manage it in our own way.

Int. 35th. What prompted the visit of Thompson to Texas in 1845? Set forth the reasons, facts, and circumstances that led to the visit, and whether it was undertaken with the knowledge and approbation of all the parties in Mobile, and of their counsel in the case, or any, and which of them. What was the object of said visit, and why was Thompson selected to accomplish it?

Ans'r. The interest of the parties in the suit pending, prompted the visit of Thompson. I heard that defendants had an agent looking for Collins to compromise with, or obtain a deed from him to the land sued for; as they were in possession of the land, I knew this would be fatal to the suit and our interests, if they succeeded in obtaining a deed from him, as his deed would be operative to the defendants, they being in possession of the land sued for. I went to Thompson and informed him of what I had heard, and that the information I heard was correct. That their agent, Col. Platt, had found out the residence of Collins, and that he must go immediately to Texas and see Collins; that all was lost if he did not go; that I believed if five or ten thousand dollars was offered him, he would make a deed to all his lands in the State of Alabama. Thompson excused himself because of the sickness of his wife, and other business. I told him all was lost if he did not go, and that I should go myself if he did not. He consented, and in a day or two left for Texas to see Collins, and inform him that defendants had an agent looking for him, and to keep him (Collins) from being defrauded by the agent of the defendants. So far as I now remember, it was only known to Cleveland and myself. I may probably have mentioned it to the counsel, though I do not remember of doing so. Thompson was Collins' agent, and knew him when a boy. He had more influence with him than any one else I knew, and I selected him for these reasons to go, which I believe met the approbation of Cleveland.

Int. 36th. Had you any conversation with Thompson before he made this visit in 1845, in reference to the law of descent as to its operation on the estate of Collins? If yea, state all that was said on the subject, and state whether Thompson was advised what law applied to the case or not.

Answer. I had various conversations with Thompson in regard to the law of descent, and all other points that I thought would arise in the prosecution of the suit. I advised him that Collins, by the law of descent, inherited the estate from his father Joseph Collins. I can-

not recollect all that was said on the subject, but advised him that the Spanish law, which prevailed in West Florida in 1811, at the time of the death of Joseph Collins, was the law of descent at that time, and by the American law S. E. Collins inherited from his two brothers.

Int. 37th. Did Thompson inform you in 1849, that Collins had proposed to give him half the estate? If yea, did you understand that this was in lieu of the deed made in Texas or not? What did Thompson say on the subject, and how did he propose to arrange the matter? Set forth all that occurrred between you and Thompson before said deed was made.

Answer. Thompson did so inform me, and I understood it was in lieu of the deed made in Texas in 1844. In January, 1849, Collins being then in Mobile, came with Thompson to my office; Thompson requested me to draw a deed reconveying to Collins one-half the land sued for. I drew a paper which did not suit Collins, and it was not signed. I then mentioned that no deed was necessary until the suit was decided, and then a satisfactory arrangement could be made between them. I told them I was opposed to any deed or arrangement being made until the termination of the suit. I do not now recollect anything further.

Int. 38. Did you have any conversation with Cleveland and Campbell, or either of them, as to the deed made by Collins to Thompson in 1849, for half of the estate? If yea, when, and what did they say of it? Did they assent or dissent, or how otherwise did they speak of it?

Answer. I did have conversation with Cleveland several times about it. Soon after the deed was made I told Cleveland, the first time I saw him, that it was made, and he seemed somewhat surprised. He said he did not know what to think of Thompson. Subsequently I mentioned it to James Campbell, who said, "He thought Thompson and Collins combined together." "He had no confidence in Thompson." Both Campbell and Cleveland were displeased with the arrangement, and so was I.

Int. 39th. At the time Collins made the deed to Thompson for half the estate, had he, Collins, any knowledge or reason to believe, that Cleveland and James Campbell, or either of them, had any interest in the prosecution of his suit or not? If yea, set forth the source of his knowledge, and the grounds of his belief, or either, or the contrary.

Answer. Not that I am aware of.

Int. 40th. When did Collins first learn that either Cleveland or Campbell claimed an interest in the result of his suit?

Answer. I do not know, of my own knowledge, that Collins was aware of it until the meeting in John A. Campbell's office, in February, 1851.

Int. 41st. Set forth fully and particularly all that you know with reference to the preliminaries that led to the meeting of Collins with

yourself, Cleveland, Campbell and Thompson, at the office of John A. Campbell, in February, 1851. What discussion, if any, were had among the parties; what was declared to be the object of said meeting, and what the necessity for it; at whose instance was it called; and by whom and when were you notified that it was to be held?

Answer. In January, 1851, Cleveland and Campbell told me, at my room, that the news of the affirmance of the decree in the case of Collins vs. Kennedy's heirs by the Supreme Court of the United States had arrived. Subsequently Thompson told me that James Campbell had demanded of him a settlement, saying the suit was ended, and that they had some short and angry words. Thompson said he told him that he did not know him in the business or transaction. Soon after I had some conversation with Cleveland on the subject of a settlement with Collins, and afterwards with James Campbell, and we concluded that we ought to have the matter settled, when Collins came to Mobile. I had heard that he was coming. Cleveland said he would see John A. Campbell, and try and have the matter settled as soon as Collins came. I saw John A. Campbell and requested a settlement as soon as Collins arrived; that I thought Collins and Thompson colluded or combined together. I do not pretend to give the exact words that any of us said, but only the substance as near as I can recollect. John A. Campbell said he would endeavor to have the matter amicably settled when Collins came to Mobile. After Collins arrived we met at the office of Campbell & Chandler. I had no discussion with Thompson in reference to the meeting, nor, so far as I know, had Campbell or Cleveland before we met. Neither had I any discussion with Collins on the subject of the settlement. The object of the meeting was to have our several rights adjusted in the suit, and to know what part we were each to have in the property recovered in the suit. The necessity for it was that the time had arrived for a definite settlement of our rights, as I thought. Cleveland and myself requested John A. Campbell to have the matter settled on Collins' arrival, and this meeting was called or the time named by John A. Campbell, at the instance of some of the parties. I was notified on the same day of the meeting, held in the evening at the office of Campbell & Chandler, but by whom I do not recollect.

Int. 42d. Had you seen Collins in Mobile within a week preceding that meeting? If yea, when and where?

Answer. I have no recollection of seeing Collins in Mobile until the day or evening of which the meeting was held. By evening I mean after night set in.

Int. 43d. Set forth fully and particularly all that transpired at the meeting above referred to, and in the order in which it occurred. State who spoke, and what each one said, and the result of said meeting; and whether said result was in any form embodied in writing, and signed by any, and which of the parties before they separated.

Answer. I do not remember all that transpired at the meeting before referred to, nor the order in which it occurred. My recollection is that each one of us spoke; and, after various remarks upon the subject of the meeting, James Campbell proposed to leave it to John A. Campbell to decide upon what portion of the property each one was entitled to, and should have or ought to have. I think Collins' reply was that "I am satisfied as matters are now," or words to that effect; and Thompson said "he was willing to whatever was right or just between the parties," or words to that effect. Cleveland said "he and James Campbell had paid $2,750 for expenses in the suit to Thompson, and they were willing to throw it in, or make no charges for it." I cannot recollect particulars. I objected to Campbell & Cleveland throwing in the $2,750 which he said they had paid. I thought all seemed willing to refer or leave it to John A. Campbell to decide. And thereupon John A. Campbell said that Sidney E. Collins one-third ($\frac{1}{3}$), Drury Thompson one-sixth ($\frac{1}{6}$), Wm. F. Cleveland one-sixth ($\frac{1}{6}$), James Campbell one-sixth ($\frac{1}{6}$), and William D. Primrose one-sixth ($\frac{1}{6}$) parts of the recovery, or the property recovered, or words to that effect, as I understood. I should have mentioned before that Thompson said "he had paid out considerable sums in the suit." I objected to Mr. Campbell's decision as giving Collins too much of the property, and made some remarks in regard to his title or rights when we took hold of them. John A. Campbell replied that the right or title of the property was in Collins, the particulars of which I do not now recollect. I do recollect that I stated I heard Collins remark, when Thompson and myself were in Texas in 1844, that if he had seven negroes he would be satisfied. And various remarks were made about the matters of account and things to be done afterwards in regard to the property. I have been under the impression that a paper was prepared by John A. Campbell, conveying two-thirds of the property recovered to Thompson, Cleveland and James Campbell; my one-sixth being included in it, to be held by them for me, and that it was signed by Collins and the other parties, except myself, that night. In my recollection of these facts I may be mistaken.

Int. 44th. Did John A. Campbell draw up any paper at that meeting? If yea, what was its purport, and what became of it?

Ans'r. I refer to my answer to 43d interrogatory for my answer to this. If any paper was drawn up and signed that night I do not know what became of it.

Int. 45th. Were any particular sums named as having been advanced, or any particular services specified as rendered either by Thompson, by Cleveland, or by James Campbell, or which of them? If yea, specify particularly what each one said, how much money, and what services.

Answer. I refer to my answer to 43d interrogatory for my answer as to my recollection of what was done and said.

Int. 46th. How soon after this meeting at Campbell's office was

one held at your office by the parties, and for what purpose was it held, and what occurred there? State fully and particularly.

Answer. My recollection is, on the second morning after the meeting at Campbell's office, after breakfast, Thompson, Collins, Campbell and Cleveland met me at my office, for the purpose of adjusting matters between us, &c. Three deeds were executed by Collins to Thompson, James Campbell and Cleveland, conveying two-thirds of the property; my interest, being one-sixth of the whole property, was included in these deeds, and I then and there took a deed or paper from Thompson, Cleveland and James Campbell for my said interest, which was then and there executed by them. I gave Collins a receipt after the execution of the deed to me by Thompson, Cleveland and Campbell; and, as the consideration for this deed to me, releasing him from all claims and demands from me. I cannot state fully and particularly all that occurred, for I do not remember it.

Int. 47th. Was the deed executed by Collins at your office brought there ready prepared? If so, by whom? Or was it written in your office at the time? Or was any part of it written there? If yea, by whom?

Answer. The deeds were brought to my office ready prepared; by whom prepared I do not know, but I believe at least two of them to be in the handwriting of James H. Campbell, Esq., a son of defendant James Campbell. At my suggestion another covenant was added by Thompson, requiring Collins to procure the relinquishment of his wife's dower to the property conveyed by said deeds.

Int. 48th. How many parts of said deed were executed, and to whom were they delivered?

Answer. I believe three parts were executed, and one was delivered to Thompson, one to Campbell, and one to Cleveland.

Int. 49th. Were any representations made at said meeting at your office with reference to James Campbell, and to improvements of the property? If yea, state fully what was said, by whom, for what purpose, and what was the effect on Collins.

Answer. There was conversation relating to the improvements of the property, or some of it. Cleveland, I think, said Campbell was a man of means and commercial credit, and would be of great advantage in the improvement of the property, or words to that effect. I do not recollect the particulars of the conversation, nor the effect it had on Collins.

Int. 50th. Did any, and if so, what consideration or considerations pass from Cleveland, Thompson and Campbell to Collins for said deed? Specify, if you know. Was any money paid at the time or not?

Ans'r. No money was then paid; the consideration was money previously advanced, and services rendered in the prosecution of the suit.

Int. 51st. Set forth and specify each sum of money advanced,

and each service or aid rendered in the prosecution of the suit by each of said parties, Thompson, Cleveland, and James Campbell for the benefit of Collins in the prosecution of his said suit; omit no credit due to any of them.

Answer. I cannot specify each sum of money advanced, nor each service or aid rendered by each of said parties, Thompson, Cleveland, and James Campbell for the benefit of Collins in the prosecution of his said suit. It has already been stated in my answers to some of the preceding interrogatories, that James Campbell advanced one thousand dollars for fee to John A. Campbell, which Mr. Campbell said he had received from Drury Thompson, as I understood. James Campbell also advanced five hundred dollars to pay the expenses of John A. Campbell to the Supreme Court at Washington City. Thompson and Cleveland furnished the money, when Thompson and myself went to Texas in 1844; I never knew the amount. Thompson paid our mutual expenses. Thompson gave me one hundred dollars to pay my expenses and commissioner's fees in Louisiana in taking the testimony of Gov. E. D. White and his mother. At another time, Thompson sent to me, at New Orleans, forty dollars to pay for investigations and expenses there, and some money for my expenses to Jackson Court-house, Mississippi, which was all the money I ever received from any of the parties in the prosecution of the suit that I recollect. I was informed by Thompson that Cleveland had advanced to him moneys at different times with which he had paid commissioner's fees and other expenses in Mobile; and with a part of which he paid some expenses of Collins. Thompson rendered aid and important services in the suit. He went twice to Texas, and, with Cleveland and Campbell, raised most of the money for the prosecution of the suit. If I ever knew, I have no distinct recollection of the amount of moneys so advanced by Thompson. He was active in giving his personal attention to, and looking after the interests of the suit. Cleveland rendered some services besides advancing money, the amount of which I do not know. I think the amount advanced by him, when Thompson and myself went to Texas, in 1844, was four hundred dollars. There was not much service done or expected of Campbell and Cleveland, so far as I know, except advancing of money necessary to the prosecution of the suit. I do not now recollect further particulars in answer to this question.

Int. 52d. Was anything said in your office at the time said deed of the 15th February, 1851, was executed, or at any time previously, by Thompson, Cleveland, James Campbell, or either of them, or by their solicitor, as to said deeds being temporary, or not final, or not intended for record, or that the transaction would require a new deed, or anything to that effect? If yea, set forth what was said on the subject, and by whom.

Answer. Something was said at my office on the subject matter inquired of. I think I advised new deeds when we got into the possession of the land, and the north boundary was ascertained, and the

account settled of rents, profits, and improvements with defendants to the suit. But it was not intended, nor did I advise that the interest of the parties in the property should be changed by any new deeds. Campbell and Cleveland, with the other parties, I think, assented to my views. I cannot set forth particularly what was said on this subject, or by whom; but whatever was said, was intended for the better securing the title which Collins had conveyed to Campbell, Cleveland & Thompson. I never heard any solicitor express his opinion upon it, either at that time, or before, as I recollect.

Int. 53d. Why was said deed not put on record till the 16th December, 1853?

Answer. At first, it was withheld because we did not wish it known who were the parties in interest to the suit, until the suit was *was* finally ended, the account settled, and possession obtained, because if there was further litigation with Kennedy's heirs, we wished to continue it in Collins's name, so that it would not be known as a speculative suit. After that, some of us wished and expected to get new deeds from Collins, acknowledging what we considered adequate consideration in the deeds, and accurately describing the north boundaries of the land—at least, this is my recollection of the transaction.

Int. 54th. Have you, since the execution of the deed of 15th February, 1851, had any conversations with Cleveland and James Campbell, on the subject of getting from Collins a new deed, or a confirmation of that above named? If yea, set forth all you have heard them, or either of them say on the subject, and when they, or either of them, last mentioned it.

Answer. I have. I do not now recollect all that I have heard them, or either of them, say on the subject, or how often. It was often mentioned, sometimes with Cleveland and myself. In some of these conversations they both blamed me, because they said I prevented Collins from doing it, when I was as anxious, or more so than themselves to have him do it. Cleveland threatened me, and swore that if Collins did not make a new deed, or confirm the old ones, he would revert the property back to the Kennedys—that Collins never could live in Mobile and enjoy it, unless he acted right in the matter. This he repeated on two or three occasions. In the latter part of 1853, or early in 1854, I met Cleveland on Royal Street, and I told him that Collins said he was so harassed by him about it, that he could not sleep of nights, and that I believed that he was then in such a state of mind, that I had rather rely upon the old deed than any new deed he could make, and thought he would run him crazy. He answered: "By God, he was glad of it, and he intended to continue harassing him." This is the last time I heard him speak of the matter. I do not now recollect anything further, although a great deal had been said. Collins came to my office in June, 1852, with a paper, a copy of which is marked Exhibit H, which I believe to be a copy of said paper and attached to Collins's bill in this case,

and read it to me. I told him not to sign it, that I would not do it. That I would not sign any paper in relation to the Collins' property unless prepared by our counsel, Campbell & Chandler, or myself. That in my judgment it was not such a paper as ought to be signed. Thompson said also, he would not sign it. Cleveland often blamed me for preventing Collins from signing this paper, and used very unkind expressions to me about it, and said he would have had the deed confirmed, if I had not prevented Collins from signing that paper. In some of the conversations, when Cleveland threatened to revert it back to the Kennedys, he said that there was a fraud committed by me in the prosecution of the suit, which he would expose, and that he would tell Hastie all about it, if Collins did not confirm the deed and act right. James Campbell also threatened the same thing at different times, and that he would go and tell Hastie or Aiken all about it, if Collins did not confirm the deeds, settle up the accounts, and give up the books and papers, &c. He came into my and Thompson's office and pretended the books were there. I took him into my back room and bed room to look; I told him there were no books or papers there; if there were, he could take them; that there was the desk that Collins and Cleveland used in the office; that he could take that, and I wished he would, as I did not want it there. He said he would go down and see J. S. Secor, and come and take it, for he believed the books and papers were in it, and he would get him to make out the accounts; that he believed I was counselling Collins, and keeping him from settling the accounts. I told him I was more anxious to have the matter settled up than he was; that I had used every effort to have Collins settle the matter, and had failed. That I believe this is the last conversation I had with James Campbell on the subject. This conversation occurred to the best of my recollections in the year 1854. I never heard Cleveland or Campbell threaten Collins about it.

Int. 55th. Do you know of any efforts made by Cleveland and Campbell, or either of them, in any way whatever to obtain from Collins a new deed, or a confirmation of some sort, of the deed of the 15th of February, 1851? If yea, set forth the same, and state to how late a period they have been made.

Ansr. Such efforts were made, and I refer to my answers to preceding interrogatories, for a more detailed answer to this.

Int. 56th. Have any representations been made to Collins by Campbell and Cleveland, or either of them since 1851, as to older titles, escheats, alienage, debts as affecting Collins' property? If yea, set forth the same fully and particularly, by whom made, how often, with what intent, and their effect on Collins.

Answer. I know nothing on this subject of any such representations having been made to Collins by either Cleveland or Campbell, other than what Collins has told me. I do not know what effect it had on him, further than to disturb and harass his mind very much.

Int. 57th. Was any particular line of conduct required of you, in

your intercourse with Collins by Thompson, Cleveland and Campbell, or either of them? If yea, state what it was, by whom requested, and why.

Answer. There was by Thompson. He requested me to let him manage Collins in his own way. He said great prudence and caution should be observed. He was afraid I would tell Collins something, which would injure or defeat the suit. That I must not talk to Collins only as to what was necessary in the prosecution of the suit, and I agreed with him I would not. I am satisfied that this request of *of* Thompson was for the benefit of the suit.

Int. 58th. Was any particular line of conduct agreed on, among Thompson, Cleveland and Campbell, or between any of them, to be pursued in their intercourse with Collins? If yea, state what it was, and the object the parties had in view, and whether it was pursued, and its consequences or effects on Collins.

Ansr. There was none that I know of, or now recollect.

Int. 59th. After Collins came to Mobile in 1845, and during his visits here depending his suit, where did he stay? Who were his associates, and what was his conduct and conversation with yourself and others as far as you know? In whom did he repose confidence, and who had influence over him, and to what extent?

Ans. He stayed at Thompson's house, and at one time at Mrs. Conway's. I do not know with whom he associated, or who his associates were in particular, except Thompson. He came occasionally to my office to see me. His conduct and conversation towards me was often that of reserve, and seemingly suspicious. He reposed confidence in his agent Thompson, and his counsel so far as I know, and they had influence over him; to what extent I do not know; but Thompson had very considerable influence over him.

Int. 60th. Do you know of a paper signed by Collins, bearing date the 25th February, 1851, addressed to John A. Campbell, containing a statement of the rents and value of the estate of J. Kennedy, in Mobile, and which paper is referred to in the answer of Thompson? If yea, state when and where the same was signed by Collins, and under what circumstances; who produced the paper and requested Collins to sign it, and what reasons were given, if any, why Collins should sign it? State fully and particularly all that you know of the making and signing of this paper, and its preparation, object, and by whom done.

Answer. I did. It was signed by Collins in my bed-room, at the time it bears date. The estimates had been made mainly by Thompson and Cleveland, and some by myself, according to my recollection. Collins was requested to sign the paper and carry it to John A. Campbell. Thompson wrote the paper which was signed by Collins at the request of Thompson. The object was to give John A. Campbell our views on the matter contained in the letter, or a copy, the above is my recollection.

Int. 61st. Do you know whom Mr. Collins consulted as his coun-

sel, and to whom he looked for legal advice, from the latter part of 1852 to July, 1854? If yea, set forth the name of the attorney or the attorneys, and all that you may know on the subject; was such employment known to the defendants, or any of them, and what did they or any of them say to it?

Answer. I know of no other except Campbell and Chandler, as long as that firm existed. Then Mr. Chandler, or some one of the new firm of Chandler, Smith and Herndon.

Mr. Collins told me that he had, or intended to employ Chandler, Smith and Herndon, to set aside the deeds made to Thompson, Cleveland and James Campbell. This was in the latter part of 1853, or early in 1854. I told him that I had employed counsel to maintain the deeds, and our rights, and I told Cleveland he had better go and employ Chandler, Smith and Herndon. Cleveland replied that he would prefer that they would take Collins's case, as we could then, with these attorneys, get the matter settled amicably with Collins he thought, and asked me to go and tell Mr. Chandler so, which I done at the time, or soon after. I do not recollect whether it was known to any one but Cleveland.

Int. 62d. Have you any knowledge of the making of the building contracts with Pond, and Ellis, and Kirkbride, for the six stores on Commerce and Front Streets? If yea, state in whose handwriting they are, by whom and when were they drawn, and in whose handwriting is the signatures "Collins and Cleveland" to each of them. Where was Collins at the time they were drawn and executed, and at whose request were said contracts written?

Ans. I have. They are in my handwriting, and were drawn by me in the Spring of 1852. The signatures "Collins and Cleveland" are in the handwriting of Wm. F. Cleveland.

A few lines at the bottom of the contract with Ellis and Kirkbride, I did not recognize as my handwriting when I saw it last.

Int. 63d. Were you present when Mr. Collins and Hallett agreed on a settlement of the suit of Collins *vs.* The Heirs and Executors of Joshua Kennedy, dec'd? If yea, state what took place, and whether a bond, or covenant made by Wm. F. Cleveland to J. Kennedy, formed a part of that settlement, and what was to be done with it?

Answer. I went with Collins to Hallett's office, and told him what terms to propose to him. Collins proposed the terms of settlement which I had instructed him to do, and said, if these terms were not accepted, he was done with his lawyers, agents and attorneys, and he would fight out the account of rents, profits, &c. Hallett replied, "What do you mean? I have accepted every proposition on the subject which has been made to me, and I accepted this." The bond or covenant of Wm. F. Cleveland to Joshua Kennedy, did form a part of that settlement. I do not recollect what was to be done with it.

Int. 64th. Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue

in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans'r. If I had the papers before me called for in my several notices served on Chandler, Smith, and Herndon, I could explain more fully, clearly, and satisfactorily my answers to the direct and cross-interrogatories.

Before serving these notices, I called upon Drury Thompson to see the triplicate deeds made by Collins in 1851. He said he had left his with his counsel, Robert H. Smith; that he would get it, and would show it to me. A few days after I called again, and he exhibited two of these triplicate deeds, which he said, and I thought were in the handwriting of James H. Campbell, except a covenant in regard to the dower of Collins' wife, which was in the handwriting of Drury Thompson. One of these deeds bore the certificate of record. This I recognized as being James Campbell's, from the fact that he told me that he had recorded it. The other one Thompson said was his. He said Cleveland or Campbell had the third, he did not know which. The deed or paper executed to me at my office by Campbell, Cleveland, and Thompson, in February, 1851, for my interest in the land, was copied by Thompson from one I drew, and additions made by him, and in the one drawn by him he required me to release him and Cleveland from all claims and demands against them, in consideration of their executing to me said deed or paper. This deed or paper, with the additions made by Thompson, is the only deed or paper that I recollect being copied in my office by Thompson, or any one else at that time. I have to state further, that I have served notices on the counsel for defendants to produce certain papers set forth in said written notices, and also given verbal notice to the solicitor for complainant to produce my letters to Collins, while the original Kennedy suit was pending, and since, up to the filing of this bill, and all other papers in his possession inquired about in the interrogatories or cross-interrogatories, which have not been furnished me by either side. These notices I request the Commissioner to attach to my answers, with the reply made thereto by Chandler, Smith, and Herndon. Had these papers and letters been furnished me, they would have refreshed my memory as to many of the questions asked me, have recalled other facts, and in every respect made my testimony more perfect and reliable. Referring to the absence of the papers, in justice to myself I state, whenever my memory and the facts set out in any of the deeds, letters, or other papers asked for, vary, I desire that my testimony may be corrected by such documents. Mr. Chandler produced only four papers, one marked Exhibit C, attached to these answers, and Nos. 1, 2, and 3. No. 1 is the original power of attorney from Sidney E. Collins to Drury Thompson, of 23d April, 1851, which was executed in my presence. No. 2, draft of my consent to power given to S. E. Collins and Wm. F. Cleveland by James Campbell and Drury Thomp-

son, dated December, 1851. No. 3, my consent executed on the 20th December, 1851, date defaced by alteration, I think. Prior to Thompson's and my visit to Texas, in 1844, I had employed Richard Pindle, of Lexington, Kentucky, and Wm. B. Hubbard, Esq., of Columbus, Ohio, to make examinations in those States, and made some examinations myself; and I had made many examinations and investigations in Mississippi and Louisiana, and while the suit was pending in Pennsylvania and New York, to ascertain whether Collins might or not have other heirs. I experienced many difficulties, toils, exposures, hardships, and some dangers, and in all my travelling and investigations bore nearly all my expenses. So far as I know or believe, James Campbell and Wm. F. Cleveland advised with no other counsel but myself during the whole time the original suit of Collins *vs.* Kennedy and others was pending in that case, and I bore most of the odium of the suit, and the ill-will of the defendants. I herewith annex a transcript from the assessment book marked F, showing value of property in 1851.

Cross-interrogatories, and Answers to same, of William D. Primrose.

First. Had you employed Messrs. Campbell and Chandler in any manner to begin or conduct any suit on complainant's title, and do you know of their having been employed prior to the return of yourself and Thompson from Texas, in 1844? Do you know that Judge Campbell was retained for the first time after your return? Do you not know that he refused to look into the case until one thousand dollars in gold should be paid to him? Do you not know that said sum was raised in gold in order to get him to investigate and give an opinion on the title? Do you not know that he, on investigation, refused to take the case upon the basis of the Texas arrangement, and refused to take it unless Collins should have a substantial interest in the land that might be recovered?

Answer. I had not employed them, and so far as I know they were not employed until after our return from Texas in 1844. I never knew him to be retained until after our return. I understood he so refused, but whether to take the case, or look into it, don't remember. I understood that one thousand dollars in gold was paid to Judge Campbell by Thompson. The employment of Judge Campbell was entrusted to Thompson. I do not of my own knowledge know the particulars. If I ever did, I do not remember it now. I do not know of my own knowledge that he refused to take the case on the basis of the Texas arrangement, or unless Collins should have a substantial benefit in the land that might be recovered. I was not present when John A. Campbell and Thompson made the contract for the fee in the suit.

Second. If you have no actual knowledge of all the foregoing facts, state which of them you do know? State whether you were not at

the time fully informed that the position of Judge Campbell was such as is indicated by the foregoing interrogatory?

Answer. I have stated in my answer to the first cross-interrogatory all I know of the facts inquired of, as to the position of Judge Campbell indicated to in first cross-interrogatory. I have no recollection of being informed of it.

Third. Did you ever pay Campbell and Chandler, or contribute to the payment to them, for any service in the case of Collins *vs.* The Heirs of Joshua Kennedy, or for services in reference to it, except the one thousand dollars before mentioned, and the twenty thousand contracted to be paid on the successful result of the suit, and five hundred dollars to pay Judge Campbell's expenses in attending on the case at the Supreme Court of the United States? Do you know of any one having paid them any other sum in reference to said case?

Answer. To this cross-interrogatory, I answer none, whatever.

Fourth. If you ever got any opinion from Judge Campbell about the matter, prior to said payment of one thousand dollars in gold, state precisely what it was, and how you got it?

Answer. After the passage of the Act of the Alabama Legislature of 1843, reducing the limitation of actions for the recovery of lands to ten years, I asked John A. Campbell for his opinion as to the construction of the Act. I asked him what his charge was, he said nothing. The object in getting this opinion was in reference to the Collins' title, and some others. I laid five or ten dollars on his table, and left the office.

Fifth. If you say that any paper was drawn in Texas from one in Judge Campbell's handwriting, state whether the form was a mere general form. State if Drury Thompson was not Clerk of the County Court of Mobile at the time, and state whether he and other persons in Mobile, were not in the habit of obtaining, procuring, and using forms for legal papers drawn by Judge Campbell?

Answer. I do not recollect the particulars about the form. Thompson was Clerk of the County Court at that time. I have known of Thompson's having other forms in the handwriting of Judge Campbell, and I have obtained some of such forms from him, to be used by me. I know nothing of the habits of other persons in this respect. I refer to the papers themselves for further answer.

Sixth. Did not Thompson while in Texas, in 1844, and while on a visit to Liberty, and during his stay there, or in that neighborhood, sleep with you on a pallet at the house of a man named Hardin, in Liberty, except one night; and was not that one night the night previous to your departure for Alabama, and did not you and he sleep that night together at Collins' house?

Ans. I staid three nights at Hardin's, in Liberty. Thompson staid two; I think it was on the second day he went off deer hunting with Collins, and did not return to Hardin's that night. We spent the fourth and last night together at Collins' house near Liberty, and left next day for Anahuac.

7th. Was not Collins anxious to enter into the arrangement with Thompson? Did it require any misrepresentation or persuasion to induce him to do it, and was he not anxious to enter into it in such manner that if the case should not be recovered he would have nothing to pay?

Answer. I do not know. I had no conversation with Collins on the subject. He signed and executed the papers to Thompson willingly.

Eighth. Was Collins at that time in a condition to sustain or carry on the suit? And could he have sustained or carried it on without the aid of others?

Answer. So far as my knowledge extends, he could not have done it.

Ninth. What was the whole extent of Collins' own wishes as to the result to him from the suit? Did he not expressly assert that the whole extent of his wishes was to get enough to buy him seven negroes, or words to that effect?

Answer. I do not know the whole extent of his wishes as to the result, as I had no conversation with him on the subject. I heard Collins say while I was in Texas in 1844, that if he had seven negroes he would be satisfied. Upon reflection, I think the remark was made in reference to the working of lands he then owned in Texas.

Tenth. Was he not so anxious and willing to get something for his claim, that you and Thompson feared he would accept some small sum from the executors and heirs of Kennedy, and dismiss his suit after it was begun, and was it not to the interest of you and Thompson, and was it not a part of your endeavors to prevent this? And to prevent it, did not you and Thompson use exertions, and make representations, and state facts to convince him that it was against his interest so to compromise? Were not the information and representations made by you and Thompson to Collins such as to show that the interest involved was large and valuable, and the prospects of recovery good?

Ans. I do not know that he was so anxious and willing to get something for his claim or not. I never heard him say, nor had I any conversation with him on the subject until after his arrival in Mobile with Col. Platt in 1845. Thompson and myself did fear that he would compromise the suit, and make a deed to the heirs of Kennedy for the property, and dismiss the bill, and we endeavored to prevent it. We made exertions and representations, and stated facts that it was against his interest to do it, at least I done so after he came to Mobile. I presume Thompson done the same when he went to see him in 1845 in Texas, and also after he came to Mobile. The information and representations I made to Collins were such as to show him that the interests involved were large and valuable, and the prospects of recovery good.

Eleventh. When was it that the executors and heirs of Kennedy sought to buy out Collins' interest? What means did they take to

do it? What counter means did you and Thompson resort to to prevent it? Did you not get Collins to come to Mobile to impress upon him the importance of not parting with his interest for any sum that the Kennedys might offer him?

Answer. It was in the fall of 1844 that the effort was made, as I understood. They employed an agent, Col. Platt, to find him. Thompson at my suggestion went to Texas; Col. Platt came with Collins to Mobile. We did not get Collins to come to Mobile. I did, and believe Thompson did also.

12th. State, if you know, or if Collins ever told you what the Kennedys offered him for a compromise, and when it was; state whether an agent was sent by them to Texas to make the offer.

Ans. Collins has since told me that there was no direct offers made to him, but that Col. Platt asked him in Texas if he would take so and so. I think it was five, then eight or ten thousand dollars, but if any compromise was made it must be upon the condition of retracting all the charges and everything in the bill derogatory to the character of Joshua Kennedy. I have stated that Col. Platt went to Texas as the agent of the heirs of Kennedy, as I understood.

Thirteenth. Is Collins not a man of good sense? Is he not a man who is very mindful of his own interest?

Answer. Collins is considered, for one who has had no better opportunities, to be a man of good sense. My opinion is, that he is mindful of his own interest so far as he understands it.

Fourteenth. Do you not know that Thompson was in the habit of corresponding with Collins about the suit from its commencement to its end? Do you not know that he frequently wrote him on the subject?

Answer. I do not know that Thompson ever corresponded with Collins until after he came to Mobile in 1845; subsequently he occasionally wrote him, as Thompson and Collins both informed me.

Fifteenth. Was not Collins in Mobile in 1845, 1846, 1847? If so, what length of time did he pass in Mobile in these years? What was the object of his visit? Was the suit a matter of much interest, and much talked of in the town? Who were the defendants to the suit, and what was their standing and experience? Who is William R. Hallett? What public place did he then and does he now fill? How does he stand as a man of sense, and as a business man?

Ans. Collins was in Mobile in 1845, 1846, and 1847. I cannot now recollect the exact time he passed in Mobile in these years. I think in one or more of them he staid a month or more. He was here to look after his interest connected with the suit. The suit was a matter of much interest to the parties. It was much talked of by some of the defendants, their friends and others, and by himself also. The defendants were the heirs and devisees of Joshua Kennedy, and his executors Hallett and Walker, James Campbell, and the Branch of the Bank of the State of Alabama, at Mobile, and others. The

standing and position of the defendants or some of them was influential. William R. Hallett was an old resident of Mobile. He was then, and is now President of the Bank of Mobile. He is esteemed as a man of good sense, much experience, and of good business habits. Some thought well of some of them, and some thought otherwise of some others.

Sixteenth. What opportunities did Collins have in 1845, 1846, 1847, to inform himself of the suit and its merits? What means did he possess for learning the value of the property? What was the value uniformly placed on the property by Thompson and yourself in 1847, 1848, 1849, 1850, 1851? Was the plaintiff acquainted with your opinion in 1851, when the settlement was made, and in the previous years?

Ans. He was in Mobile in 1845, 1846 and 1847, passed a considerable time with his agent, and staid at his house except once, and then he staid at Mrs. Conway's. Had interviews with his counsel, Campbell and Chandler; talked with me occasionally, and with some of the witnesses. Was present at the examination of Henry V. Chamberlain, and I think was present part of the time when Samuel Penny was examined in regard to the tax assessments of the property. He was present when the case was argued in the Court at Mobile. He talked with Joseph Krebs, A. Demony, and perhaps with others. I estimated the value of the property, including the amount of rents, profits and sales of part of the property, up to 1849 and 1850, at two hundred and fifty to three hundred thousand dollars. After that time, or at the time of the settlement afterwards at two hundred thousand to two hundred and fifty thousand dollars. A portion of the property sued for, was not recovered in the suit.

I often told him what my opinion was as to its value during the periods stated. He must have known Thompson's estimate of the property. He did not estimate it as high as I did. In these estimates of mine, prior to the final settlement, was a very large amount of rents and profits, which were never realized, and also considerable portion of land.

Seventeenth. Was there any concealment from the plaintiff of the condition of the case as it stood at any time in court? Was the brief prepared by the solicitor for the Supreme Court of the United States sent to him? Did you, in the winter of 1851, cause an edition of the opinion of the Supreme Court to be printed at Mobile? What was the number printed, and what became of them? Did not the plaintiff get one? Was not one sent to him, and why was it sent? Did he not have a printed copy of the record in 1851 or sooner? From whom did he get it, and where is it now?

Answer. So far as I know, he had no knowledge of how the case stood in court until 1845; there was no concealment as to the condition of the case as it stood in court after that time as I know of. I can only say prior to that time, I had no communications with him verbal or written on the subject. I know nothing of what the other

parties advised him prior to 1845. I sent him a copy of the brief of Judge Campbell. I did cause the opinion of the Supreme Court to be printed in January, 1851; 500 copies were printed. I distributed them to various persons about Mobile. In November, 1851, I obtained, in Baltimore, from Reverdy Johnson, his copy of the record. I gave it to Collins. Do not recollect the exact time, but think it was some time in 1852. I saw it recently in the possession of Dan'l Chandler, Esq.

Eighteenth. Did Collins at any time express to you his satisfaction with the settlement of February, 1851? State when, how often, and in what terms he expressed his feeling in 1851.

Answer. Collins did at various times while in Mobile and while we were travelling together in the West. I cannot say how often or the exact terms.

Nineteenth. Did Collins, after the conclusion of the settlement in 1851, ever express his satisfaction with the solicitors who conducted the cause? State when and in what terms that satisfaction was expressed and indicated prior to the summer of 1851. Did he propose at any time to add to the fee of either of the parties a lot, and was that communicated by you to those solicitors or either of them?

Ans'r. Collins did, after the settlement, express his satisfaction with his solicitors whenever I heard him speak of the matter up to 1854. At my suggestion, he did propose to add a lot to the fee of John A. Campbell, or perhaps as a present, if the defendants to this suit would join him in it. I thought that he would do so, and I stated that he would.

20th. Did you write a letter to either of the solicitors in the cause in 1851, to acknowledge the obligations of all the parties to said solicitors and to testify their full approbation of all their proceedings and conduct? Did you communicate that letter to Collins before or after it was sent, and was it approved by him?

Answer. I believe I did. I don't recollect whether I did or not, not having the letter before me. I refer to the same.

21st. In complainant's 60th interrogatory addressed to you, you are asked respecting a paper signed by Collins, and addressed to John A. Campbell. Now, please to state fully and distinctly if that paper was not made in order to convince John A. Campbell of the propriety of going over and taking an account of rents and profits against Kennedy's estate? Was there not a difference between Judge Campbell on the one hand, and Collins and yourself, and Thompson and Cleveland on the other? Was it not the wish of yourselves (including Collins) to go on with that account, and were you not each and all interested in and exerting yourselves to that end? Was not the paper prepared and executed with Collins's knowledge and consent? Did he not aid in the investigations on which it was prepared? Did he not know, and approve of the contents?

Ans'r. The paper was addressed to John A. Campbell, to convince him of the propriety of going on to take an account of the rents

and profits, and of the ability of Kennedy's estate to pay them. There was a difference. John A. Campbell wanted a compromise with the defendants. We thought we should be losing too much by it, and wished to litigate it. I refer to my answer to the 60th direct interrogatory for my answer to the balance of this interrogatory, and to the letter itself.

21. State whether Collins, during the progress of the suit, had not opportunities of looking into it, of learning the matters embraced in it, whether he did not feel, take and exhibit a lively interest in it? Whether he did not read the bill and answers? Whether he was not aiding in getting up proofs? Whether he did not attend the examination of Henry V. Chamberlain as a witness? Whether he did not attend the argument of the case in Mobile? Whether it was not fully argued? Whether his rights, and the whole merits of the case were not fully and ably argued? Whether he was not deeply interested in, and anxiously inquiring about it while pending in the Supreme Court of the United States? Whether he had a printed copy of Judge Campbell's brief in that court? Whether he was not confident of success, and so expressed himself? Whether, by letters or otherwise, he was not informed of the result in Texas, before he came to Mobile in February, 1851?

Answer. To the best of my knowledge I answer this interrogatory in the affirmative, except that I do not know that he read the bill and answers, or the final result. I annex letter marked (E). I wrote Collins from Cincinnati, before the decision, that the result would be in his favor.

22d. Have you not over and over again said to the solicitors now conducting this suit for the defendants, and to others, in effect, that the bill was filled with falsehoods; that Collins had been dealt by with great liberality; that Judge Campbell had awarded him more than he was entitled to; that he, Collins, was fully informed of the merits of his suit as it progressed; that he was not imposed on, nor taken advantage of; that he was taken up, his rights ferreted out and asserted, when he had not the means or power to do it? In a word, have you not represented that the conduct of the defendants to Collins was liberal, fair, and just; that his pretensions were false and in bad faith? Have you not said that Judge Campbell would not touch the case until the defendants paid him one thousand dollars in gold? Have you not also said that Judge Campbell's services saved the case in the Supreme Court; that Mr. Sergeant wrote word for Judge Campbell to come on; that he, Sergeant was sick, and could not do the cause justice; and that Collins, or some of the defendants with Collins's approbation, offered Judge Campbell five thousand dollars to go, and that Judge Campbell refused to take anything except five hundred dollars to defray his expenses? Please state whether these things are true or false.

Answer. I have had so many conversations with the solicitors for the defendants in this case and others, that I do not now remember

many of the conversations that I have had, that I cannot remember the substance in many things. I recollect that I have said that Judge Campbell awarded Collins as much or more than his share of the speculation; that he ought to be satisfied. I do not recollect saying that the bill was filled with falsehoods, but I do recollect saying that the bill contained charges that ought not to have been made. I have no recollection of saying that he was fully apprised of his suit as it progressed. I recollect nothing about saying that he was not imposed on, nor taken advantage of. I did say Collins's rights were ferreted out, and he was assisted when he had not the means or power to do it, or words to that effect. I recollect no such remarks as that the conduct of defendants to Collins was liberal, fair, and just. I have said that in some things they were wrong, and not in good faith. I have no recollection of using the words that the pretensions of Collins were false and in bad faith, but I have said he signed the papers and got his full share, and ought to be content. I have said he would not take the case until one thousand dollars was paid, and that his services saved the case in the Supreme Court; and I think so now. I answer the balance of this cross-interrogatory in the affirmative, except that Collins was not here, and that I said to John A. Campbell that he must go. If he wanted five or ten thousand dollars, that he must have it, for I believed it would be lost if he did not do so; that James Campbell would give a check for what he required. Collins knew nothing of this transaction at the time. My information of Mr. Sergeant's health came from John A. Campbell.

23d. When you went to Liberty, Texas, in 1844, did you not go there from Galveston by steamboat? Is not Liberty on the Trinity River? Was the arrival at Liberty of a steamboat at that time an ordinary occurrence, or was it an unusual event?

Ans. We did go on a steamboat from Galveston. Liberty is on the Trinity River. I do not know whether it was ordinary or usual for steamboats to go to Liberty. It was the only time I ever was there.

24th. What was the size and population of Liberty in Texas in 1844? How far from Liberty did Collins live? How often was he at Liberty during your stay there?

Answer. Liberty was a place of about two hundred inhabitants in 1844. Collins lived about five miles from it. My recollection is, that he was there three times.

25th. Do you know that Collins was informed or knew that you and Thompson came from Galveston, and came on the steamboat?

Answer. I answer in the affirmative.

26th. Did you and he have any horse or private conveyance with you? Did any stage or other public conveyance run to Liberty at that time?

Answer. We had none with us. I know nothing of the public conveyances of the country at that time. I saw no stage or public conveyance.

27th. When you left, did Collins accompany you any part of the distance? If so, how far? How did you get there? From whence did you procure horses? Who took them back?

Answer. When we left, Collins did accompany us part of the way, said to be twenty-five miles, to Anahuac. We went on horseback. Collins furnished the horses, and took them back.

28th. How many rooms did Collins have to his house? How many beds? What were his means of accommodating visitors? How many servants did he have? What was the state of his wife's health?

Answer. Two rooms below; how many above stairs I do not know. They were limited, from what I saw. I do not know how many servants he had. His wife's health was bad; she was sick in bed.

29th. Did you see Andrew M. Desmuke while there? What was he doing? Where did he live? What relation or connection was he to Collins and his wife?

Answer. I saw a man by that name, who said he lived a few miles off, and said to be a brother-in-law of Collins. He was a physician, and, I think, attending Collins's wife.

30th. Do you know that in 1844 Texas was a new country, and that many of the people there owed large sums to persons in Alabama and other States, and do you not know that Thompson had such claims?

Answer. Texas in 1844 was a newly settled country, as we called it. I have often heard that persons emigrated to Texas, leaving debts behind them in the States from whence they came, Alabama among the rest. I know he had a claim against Lann & Talbot, and might have had others.

31st. What were the facilities for travelling in Texas in 1844, and what was the state of the weather and roads while you were there? What the facilities for getting through the country?

Answer. Very bad, so far as I know, for travelling and getting through the country. The weather was sometimes disagreeable and rainy, and part of the time fair and pleasant.

32d. What was the position of John A. Campbell at the bar of Mobile and of Alabama in 1844, and from that time till his elevation to the bench of the Supreme Court of the United States?

Please state if his position was not that of the first lawyer in Alabama, and if such was not a notorious fact. Was it not true, that an opinion of Judge Campbell favorable to the assertion of land titles in Mobile, and to the success of a suit upon such titles, would not tend to induce the opposite party to offer a compromise or settlement?

Ans'r. Judge Campbell was a prominent lawyer in 1844, at the bar of Mobile, and in Alabama, and from that time to his elevation to the bench. His position was of a high order. Many considered him the first lawyer in Alabama. He was well acquainted with land titles. An opinion of his in regard to them had great weight, and sometimes, if favorable, would induce a compromise.

33d. Do you not know that the firm of Campbell and Chandler were in the habit of being employed by Drury Thompson in his business?

Answer. I answer in the affirmative.

34th. If, in response to the complainant's 21st interrogatory, you say that it was understood that Campbell and Chandler were to be your attorneys in the case, please state, if it was not simply your own conclusion, and if, on your return, you did not have to pay Judge Campbell one thousand dollars in gold to get him to look into the case.

Answer. Judge Campbell was paid one thousand dollars in gold after our return from Texas to attend to the case, as I understood. I do not know that Campbell and Chandler were employed before we went to Texas.

35th. What were Judge Campbell's habits as a lawyer? Did you ever know of his looking for or courting business? Was he not a studious retired man, austere in his habits, and little inclined to suffer his pursuits, unnecessarily, interrupted? Did he tolerate frequent interruptions by his clients? Was it not well known and understood in Mobile that Judge Campbell industriously and ably conducted business entrusted to him, and must not be intruded upon frequently or unnecessarily? In the language of complainant's interrogatory, "Set forth the truth fully."

Answer. Judge Campbell's habits as a lawyer were good. He never, to my knowledge, looked for, or courted business. He was a man that studiously attended to his business, and ably managed his cases. He was sometimes emphatical, and a man generally of a few words, and knew when and where to use them. He did not tolerate too frequent interruptions, unnecessarily, by his clients; sometimes a little abrupt. I never found any difficulty to communicate with him when necessary to do so. His manners and language not very prepossessing when he did not wish to be interrupted. He was a very skilful and successful lawyer. "In the language of complainant's interrogatory, I have set forth the truth fully," so far as I know.

Int. 36th. If, in response to twenty-second interrogatory, you say you had got any opinion, was it more than a general answer to some question about the limitation act of 1843? Did Judge Campbell charge you for it. Did Judge Campbell know, or did you inform him that his opinion was asked in reference to the Collins title? Were there not in Mobile a great number of land cases in which the question applied, and was there not many of them in which you took an interest?

Answer. I refer to my answer to the 22d direct, and to the fourth cross-interrogatories. I do not know whether Judge Campbell was informed of the object of my getting his opinion.

37th. Do you not know that when Judge Campbell said he wanted one thousand dollars in gold before he would look into the Collins case, the parties had difficulty in raising it; that it was obtained with

some difficulty, and that so far as Judge Campbell or Chandler were concerned they had nothing to do with, and had no knowledge of how it was raised? If Judge Campbell drew any notice for you to James Campbell, was it not a mere ordinary short notice, that any ordinary skilful writer could draw? Was one cent charged or payed for it, and did the thousand dollars paid Judge Campbell have any relation to said matter?

Answer. I do not know any difficulty; I was informed by Cleveland that James Campbell advanced the money on the notice being served on him. I do not now recollect that Campbell or Chandler had any knowledge of, or anything to do with the raising of the money. The notice drawn by Judge Campbell was a mere ordinary notice, which any skilful writer could have drawn; nothing was charged, and nothing was paid for it. The thousand dollars was raised on the service of the notice on James Campbell, as Cleveland informed me.

38th. Were not the cash expenses, required to be met in the Collins suit, more than you, Thompson and Cleveland, found it convenient to meet? Was not James Campbell a man of means and credit, and did you not admit him to an interest in the said suit, to obtain money for carrying it on?

Answer. So far as I know, it was; James Campbell was a man of means and credit. We enlarged Cleveland's interest in the suit for the benefit of James Campbell, and he agreed that Campbell would advance the money necessary for the suit.

39th. Did you not know, that before or at the time of the execution of the deed from Collins to Thompson of January, 1849, Collins had wholly discarded the idea of being bound by the Texas papers? Did he not emphatically, about that time, declare to you that he would do nothing to recognize these papers? Did he not refuse to receive any conveyance from Thompson, and repudiate the idea of Thompson's having any title? Did he not inform you that Judge Campbell had advised him that he was not bound by them? Do you not know that Collins had declared his willingness to treat Thompson as a brother, or to give him the share that would have gone to his deceased brother?

Answer. I do know that before the execution of the deed of 1849 (January), from Collins to Thompson, Collins became dissatisfied, and discarded the idea of being bound by the Texas papers. He did, at that time, declare that he "would do nothing to bolster up those old Texas papers," and refused to receive a conveyance from Thompson for half the land, and repudiated the idea of Thompson having any title. He told me that Judge Campbell advised him that he was not bound by the Texas papers. I do not know that he declared his willingness to put Thompson in the shoes of his deceased brother George, and give him the share of his deceased brother.

40th. Did not Collins know that you and others were interested

in the matter before January, 1849? Were not your constant attention to the matter, and participation in it, and your frequent interviews with Collins of such a character to satisfy him, that you had an interest, or that you were a very officious person in matters that you had no interest in? Did not Collins before that time know who were the parties in interest with Thompson?

Ans. I do not know that he did. I told Collins that I was employed by Thompson to take testimony, and render such services as I could for advancing the interests of the suit. He did not, that I am aware of.

41st. In your response to 37th interrogatory please separate so much as may be your inferences and such parts as may be facts. State the facts.

Ans. I perceive no inferences in my answer to 37th interrogatory.

42d. How long were you applied to, in reference to a meeting at the law office of Campbell & Chandler, in February, 1851, before it took place? Were you then well or sick? How long before you got well? Do you pretend to say that Sidney E. Collins arrived in Mobile on the day the meeting took place?

Answer. If the words "applied to" mean spoken to, I answer, I had conversations with Cleveland and Campbell some days before the arrival of Collins, and had also spoken to John A. Campbell on the subject of having the matter settled when Collins came. I had been sick, but was then well enough to attend to business. Cannot say how long it was before I got entirely well. I have no recollection of seeing Sidney E. Collins until that day; if he was here, I did not see him.

43d. Do you pretend to say that Judge Campbell had anything more to do with calling that meeting than to name the time as one of convenience to him? Did he say one word intimating that he had called it? Was it true that he had called it? Was it not called simply at the request of the parties? Did Judge Campbell do more than suggest, at the request of the parties, his view of what would be justice in the settlement?

Answer. I do not. I do not now recollect that he said one word about calling the meeting. I do not know that he called it; so far as I know, it was at the request of the parties, or some of them, and he named the time. After conversation between all the parties, Judge Campbell suggested what he said he thought would be justice between the parties to the settlement. I refer, for greater certainty, to my previous answers on this subject.

43d (2d). Did not all parties except yourself acquiesce in Judge Campbell's intimation? Was not Collins pleased? Were you not disappointed? Did not Judge Campbell maintain Collins's right against you to two shares? Did not the parties talk the matter over fully and freely? Did not the interview consume a winter's evening? Did not the parties—that is, Collins, Thompson, James Campbell, and Cleveland—go from the office of Campbell & Chandler to an oyster

house and take supper, and did you not all talk over the matter of the sale and improvement, and rent, renting, &c., of the property? Do you not know that Collins was pleased, and considered the settlement fair, just, and liberal towards him?

Answer. All but myself did acquiesce. So far as I could judge, he was satisfied, and I was disappointed. Judge Campbell maintained Collins's right to two shares against me. The parties talked some of the matters over freely and considerably. It consumed a winter's evening, or greater part of it. I do not recollect exactly how long we were there. We did go to an oyster supper, and I believe we did talk about the sale of a portion of it, improving and renting it. I do know Collins was pleased, and considered the settlement fair, just, and liberal towards him. I cannot recollect all that was said.

44th. If you say that any paper was drawn or signed at that meeting in the office of Campbell & Chandler, give the purport of it. Do you not know that no paper was drawn or executed; that, on the contrary, when the parties were about leaving, Judge Campbell requested them to think of his suggestions, and if they came to a conclusion, and he could aid them, to call on him, or words to that effect?

Ans. I refer to my answer to the 43d interrogatory, the two last sentences, for all I recollect of the matters inquired of in this interrogatory.

45th. State the day of the week when the meeting took place at the office of Campbell & Chandler.

Answer. I do not recollect the day of the week.

46th. Were not the improvements of the property, its sale, the raising of funds to build it up, the erection of buildings, the leasing of the same, and the finding of suitable tenants, the paying of debts incurred in the suit, all important matters in reference to the estate? Were they not so considered by the parties? Were not James Campbell and Cleveland considered (one or both) as possessing the experience, skill, funds, credit, necessary for these, or words to these ends? And were not they, or one of them, looked to in reference thereto, and did they not render important aid therein?

Answer. I answer in the affirmative.

47th. Were you not originally dissatisfied with the division made? Have you not remained so, and imagined or supposed you ought to have had more? Have you not spoken to Collins lightly of the rights and claims of others, and magnified your own? Did you not advise this suit? Did you not give statements in writing and orally (one or both), on which many of the allegations of the bill are made? If not, please explain how many matters are inserted in the bill which, if true, could only have been known by you, and which of the interrogatories are framed to draw you out. How could Collins or the pleader have ever produced such an accord between you and them without you had before given the information?

Ans. I was originally dissatisfied with the division made. I have not remained so. I acquiesced in the division at the meeting at my

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office, on the 15th February, 1851. My dissatisfaction has been with *the parties*, in other matters in regard to the property. According to the principles of justice and equity, I know I ought to have had more than some of the defendants; and since 1855 I would freely have given from five to ten thousand dollars in property for peace, and to have had the decision of Judge Campbell, of February, 1851, carried out in good faith. I have not spoken lightly to Collins of the rights and claims of others, as I recollect of, but gave them credit for all I knew they had done in the suit. I have never magnified my own, as far as I know. I did not advise this suit, but, on the contrary, exerted myself to prevent it, and have it withdrawn. I did give a statement in writing in the fall of 1854, which may have been used in framing this bill, or something taken from it. The conduct of Cleveland provoked me to do it. Collins told me that Cleveland had for some time been making disparaging remarks to prejudice him against me, and that I, in connection with Judge Campbell, had committed a fraud in the prosecution of his suit, that, if known, would upset his titles; that he could tell him things about me that would make the hair rise on his head; and that I had been acting wrong in the Krebs matter, and must make it right. I also had conversations with him on the subject, and showed him the agreements of Thompson, Cleveland, and myself, of 1842 and 1844, in regard to the property. I cannot explain further as to how many of the allegations of the bill which, if true, could only have been known by me, and which of the interrogatories are framed "to draw me out." These disclosures may account for some of the accord (if there be any) alluded to in the interrogatory. And I concluded to accede to Collins's offer of compromise, and get out of the matter the best way I could.

48th. Have you not consulted with Collins and with his solicitors, one or all of them, about this bill, its forms and allegations? Did you furnish no written statements before it was drawn? None since? If so, append copies of all, literal copies. Have you written Collins or his solicitors on the subject? Have you sent them, or either of them, messages? Have you not greatly interested yourself about this case? Are you not in the habit of visiting the clerk's office to inquire into it? Do you not, step by step, note its progress, and look into every paper filed in the case?

Answer. I have not consulted with Collins or his solicitor, or any of them, about this bill, or its frame, or its allegations. I furnished Collins with the information set forth in my answer to 47th cross-interrogatory. It was partly verbal and partly written. I have furnished none since. I have not the part in writing, or any part of it, nor have I seen it since. I have neither written Collins nor his solicitor, or either of them, on the subject, except in some of my letters to Collins, while he was in Texas in 1855, and after he left here. I wrote to him on business and on other matters. In some of said letters I have mentioned some things in relation to the con-

troversy between the parties. I have not sent them, or either of them, messages. I have and feel an interest in the subject, and greatly interested myself to prevent this suit from being brought, and afterwards to get it dismissed, and the matters amicably settled up. I frequently visited the clerk's office to inquire about it, and have examined some of the papers, but not all of them. I do not, step by step, note its progress, and look into every paper filed in the case.

49th. Have you no understanding, agreement or arrangement with complainant or his solicitors in reference to your interest in the property? If so, and it is in writing, append it. If any memorandum of it exists append it. Are you not protected, let this suit go as it may? Have you no word, promise or obligation from Collins that you shall not be harmed by the result of this suit? If not, what has become of it?

Answer. I have no agreement, understanding or arrangement with complainant or his solicitors in reference to my interest in the property. There is no such paper or memorandum in existence. None such was ever executed. I am not protected, let the suit go as it may. I have no word, promise or obligation of Collins that I shall not be harmed by this suit or its results. Collins did offer me a paper several months ago, which, he said, would protect me to the amount of the compromise he offered me in the early part of 1855, and which I agreed to accept. I showed this paper to my counsel, Judge Dargan, and two of the solicitors of these defendants; kept it about a month, and returned it to Collins, declining to take it. It never was executed. He has said several times he did not wish to disturb me if he could get his property from the other parties. Said paper was to secure me in the amount of thirty thousand dollars. I refused to take it.

50th. Where does Kiah B. Sewall live? How far from Mobile? Where does Collins stay when he is in Mobile County? How does he come to town? In whose buggy? How much of his time has Collins spent in and about Mobile since this bill was filed? Where did he live up to shortly before this was filed? Where did he then pretend to remove to? How long was the bill in contemplation before it was filed?

Answer. Kiah B. Sewall lives about four miles west from Mobile, between Dauphin Way and Shell Road. I have understood Collins staid part of his time at a Mr. Vicker's, in the city of Mobile, from his arrival in December, 1855, until some time in the spring of 1856, and a part of his time at K. B. Sewall's, but exactly how long at each place I do not know. Do not know how he comes to town, or in whose buggy. I do not know how much of his time he has spent in Mobile since the bill was filed. I kept no record of his time. He has been here twice, or oftener, I think, since the bill was filed. The first time he remained here five or six months, I think. Shortly before the bill was filed he lived in Texas. He had previously lived

at Citronelle. Left there in the latter part of June, 1855, for Texas with his family, and remained until after the bill was filed. I do not know how long the bill was under contemplation.

51st. How often have you had interviews with complainant Collins on the subject of this suit since the bill was filed, and how often before?

Answer. I cannot say how often I have had interviews with complainant Collins on the subject of this suit since the bill was filed, nor how often before. I have never counted the times, or kept any record of them. At some of these interviews the subject of the suit was alluded to, and at some not. The object of several of these interviews was to get him to dismiss his bill and settle the matters amicably.

52d. Collins knew your interest. The interview at the office of Campbell & Chandler and the papers show that. How did it happen that you are omitted from the suit? Was not that matter arranged before the suit was brought? State fully the terms and conditions upon which you were left out of the bill.

Answer. I had previously told him I would accept the compromise he offered, and I was no party to the triplicate deeds of 1851 (February). It may result, I suppose, from these facts. If it was so arranged, it must have been with Collins and his solicitors. I was no party to any arrangement on the subject. I was not consulted, and knew no terms or conditions about it. I heard Collins say, before he went to Texas in 1855, that neither John A. Campbell or myself would be made a party to said bill. This was when I was trying to persuade him from bringing the suit. I declined the compromise above spoken of, as herein before stated.

53d. When the deed of February, 1851, was made, the case had been decided by the Supreme Court of the United States. Please state what other matters of litigation then remained open, except the account to be taken? If none, what was the object in wanting further deeds? Did not Thompson expressly declare, in reply to your own suggestion, that further deeds would be desired, or would be proper to be made; that the deed was good enough for him; he wanted no other?

Ans'r. The north boundary line of the land was unsettled and uncertain, and possession was to be obtained. The object in wanting new deeds was to define certainly the north boundary line of the land, the boundary to be described in the deeds, and for the deeds to express a considerable money consideration, and I wanted a division of the property. Thompson did sometimes make the remark alluded to.

54th. Was it not you who got up the idea about the escheat, alienage, debts affecting Collins's property, &c.? Were not these matters that gave you concern and apprehension, and did the other papers pay any regard to your suggestions on these heads? Has not Collins paid you one thousand dollars to keep you from agitating these

matters? Explain for what the thousand dollars was paid to you, or for you, why was it paid?

Answer. I did mention to Collins about escheats and alienage, and perhaps to Cleveland, and also to these defendants the debts of George E. Collins. I had some of these debts in my hands for collection, which gave me some concern and apprehension. The alienage and escheats did not give me much. I do not know what attention these persons paid to them, more than Collins informed me that he was harassed by Cleveland and Thompson, so that he could not sleep of nights; that they said if he did not make new deeds for the property, that I would escheat it, and told him that I was a dangerous man in a law suit, could prove anything I wanted in such a way that it could not be found out. He offered me one thousand dollars, he said to enable me to settle some of my old debts and to keep me quiet; that he had heard Cleveland often say that he ought to, and was willing to pay me a thousand dollars for letting James Campbell have an interest in the speculation in 1844. He did not have the money, and I took his note at twelve months and he paid it, and I promised him that I would not say anything that they could harass him about.

55th. Do you pretend that Chandler, Smith and Herndon, or either of said firm ever represented Collins in any manner touching this suit? On the contrary, do you not know that he sought their services and was refused? And do you not know that in seeking their services he expressly declared that it was not his object in any manner to impugn his solicitors (Campbell and Chandler), or to call in question their action, and that he expressed himself in this connection as satisfied, and pleased at the justice done him by them? Do you not know that Kiah B. Sewall, Esq., is unfriendly towards Hon. John A. Campbell, and that he drew the bill in this case?

Answer. I do not pretend to say that Chandler, Smith and Herndon, or either of them ever represented Collins in any matter touching this suit. I heard from him and them that he sought their advice, and they declined. I heard him (Collins) say, that if he could get their services and recover his property back, he did not wish to call in question the conduct of Campbell and Chandler. He said he was satisfied with the justice they had done him in the prosecution of the suit, but not with the settlement of February, 1851. This was said in the spring or summer of 1854. I have no knowledge, only hearsay on the subject of the feelings of K. B. Sewall, Esq., towards Judge Campbell. I heard Mr. Sewall say he had no such feelings. The bill is in his handwriting.

56th. In the settlement with Hallett, was not some debts of yours taken up, and did you not combine with this matter of taking up your debts, the bond of Cleveland? Do you not know that the bond had been paid, or the obligations discharged, and that the bond was to be given up to Cleveland?

Ans'r. There was no debt of mine taken up. I do not know that

the bond of Cleveland had been paid, or the obligation cancelled, or that it was to be given up to him.

57th. How much of the time has Collins spent in and near Mobile since the filing of the bill in this case? How much of the time has his family remained in or near Mobile? How long since he and they left? Where did they stay? At whose house during said times? Was it not at the house of Kiah B. Sewall, Esq.? Where did Collins formerly keep his office? Where has he recently kept it? and where does he now keep it? Were Collins and Sewall formerly on terms of intimacy, or friendship, from which it might be supposed that they would with their families reside under the same roof?

Answer. He came here in December, after the bill was filed, and remained five or six months about Mobile. He then went to Texas, and returned some time last fall or winter. He went to Texas again, when I do not know, and remained some time, and then again returned to Mobile. I kept no account of his time, I only speak from recollection. They remained five or six months at one time, went to Texas and returned, and how long they remained since I do not know. I have not seen his family since they went to Texas in 1855. Since the filing of the bill I understood they staid part of their time at Vickers's, a part of the time at Sewall's, and part at Lewis's, at Spring Hill; and I heard at Citronelle a part of the time. He formerly kept an office with William F. Cleveland, north of St. Louis Street. I do not know where he has recently kept it, or where he now keeps it. I never knew of their families residing under the same roof, nor do I know anything of their former terms of intimacy or friendship, more than that they were members of the Board of School Commissioners in 1854. I understood that Sewall's family went to the North, and Sewall went to the Supreme Court, when Collins's family went to his house. This was in the spring or summer of 1856.

58th. Has not Collins told you, or said in your presence, that the allegations in respect to Judge Campbell in the bill were unauthorized and unexpected by him, and that Sewall did it without his knowledge and against his wishes, or words to that effect?

Answer. Collins never has told me so, that I recollect of. I remarked to Collins, that he ought not to have used such language towards Judge Campbell in his bill. He said that he would rather they had been in somewhat different language, but that they were true, and he would meet John A. Campbell and Drury Thompson at the bar of God and tell them so.

59th. Was not any opinion given you by Mr. Chandler respecting the prospect of recovery on the Collins title, given without investigation as to facts, and predicated upon a supposed state of facts laid before him by you? Was it not short, and did he charge, or you pay him one cent for it?

Answer. The opinion given me by Mr. Chandler, was predicated on a statement of what I considered as facts, laid before him by me. It was a short opinion. He charged me nothing for it.

60th. Do you know of James Campbell or Drury Thompson, having on or about 20th of December, 1851, made a power of attorney to Collins and to Cleveland, authorizing and empowering them to execute any mortgage, or give any lien, or incumbrance on the property recovered in the suit of Collins *vs.* Kennedy *et als.*, or certain parts of it, to build on, and improve the property, to rent and collect the rents, to sell certain parts of it, and to settle and pay off incumbrances? Did you ratify and assent to the same in writing or otherwise? Did Collins and Cleveland accept the power, and agree to act under it, and did they agree to keep fair and proper books and accounts, and to account and settle with the parties?

Answer. I do know that some such power was drawn, and my impressions are that it was executed, or some other such power having the same objects in view. I assented to the same in writing and verbally, they accepted the trust and agency for Thompson, James Campbell and myself. They agreed to keep fair and proper books and accounts, and to account and settle with the parties.

61st. Did Collins and Cleveland proceed to act under the power? Did they obtain and keep an office? Did they procure and keep books? Did they build and improve the property? Did they sell parts of it? Did they pay debts incurred, from the proceeds? Did they rent the property? Did they fill up and build a wharf or wharves? If any or all these were done, state when they were done, state the value and extent of the property sold, and to whom it was sold. What improvements were made? Set down fully and particularly every act, which within your knowledge was done under and in pursuance of, or in recognition of said power.

Ans. Collins and Cleveland did act for Thompson, James Campbell and myself, and had full power and authority from us to do so. They kept an office, procured and kept books, they built on and improved portions of the property, sold and rented parts of it, paid debts incurred, from the proceeds, and filled up and made other improvements. The wharf was built mainly by Cleveland, in 1851, before the agency of Collins and Cleveland commenced. I cannot state every act they done. They superintended the building of six large stores in 1852. A sale was made to James, John and Samuel Battle, for thirty-five thousand dollars cash; to Charles W. Dorrance, property was sold for ten thousand dollars; to R. W. Smith, nine thousand dollars; Jacob Magee, fifteen thousand dollars; Thomas T. Bolling, fifteen thousand dollars; I refer to the deeds to these parties for the extent of the property sold.

62d. How long did Collins and Cleveland keep their office together? What became of the books and papers, and what of the power itself? Do you know that Collins took possession of those books and papers? and do you not know that he took the power of

attorney itself? What amount of notes and bills, and leases, arising from the property did he take? When was this?

Answer. They kept their office together about one year. I saw two books at the residence of Collins at Spring Hill, during the yellow fever of 1853. I saw the same books at the office of Thompson and myself afterwards in the fall of 1853, or early in 1854. I do not know what became of the power itself. I do not know what amount of notes and bills and leases arising from the property he did take, but believe he took most of them.

63d. Do you not know, or have you not good reason to believe, that Collins obtained and keeps the paper which he and Cleveland gave Thompson, accepting said power and undertaking to act under it, and carry out the intention of the parties as provided in the power? Did not Thompson keep his papers in a desk in your office, or was not that paper in a desk in your office? Did not Collins go into that desk, and take a paper from it, and was not the paper last mentioned?

Answer. I do not know, but have good reason to believe that Collins obtained the paper, if it ever was executed. If that paper was before me, I might answer more fully. Thompson kept a desk in my office, but what papers he kept there I do not know. I never saw Collins go into that desk. Some time in the early part of 1853, when Collins and Thompson were endeavoring to make a settlement of the books of the concern, I saw Collins looking into a drawer of a certain desk and book case belonging to Thompson or his son, who staid in the same office with us. Next morning I saw him have a paper in his hand; I did not see a word that was in or on it. I have sometimes thought that was the paper inquired about. Some months after that, I heard Thompson say that he had lost the paper, and it was stolen out of his coat pocket.

64th. Where did you last see the books and papers kept by Collins and Cleveland, and when did you see them? What has become of them, and what has become of the desk that contained them? Did not Collins take them, and did not you advise him to do it?

Answer. I last saw the books, two in number, and I do not recollect that I saw any other, and some of the papers at the office of Thompson and myself, when he and Thompson were endeavoring to make out the accounts. I do not know what has become of them, but believe Collins took them away. They were not in a desk at that time, but were on a table, or in a table drawer. The desk or book case of Thompson or his son, is still in my office. I did not advise him to take them away.

65th. Did you know the contents of the bill filed in the case of Sidney E. Collins *vs.* Kennedy *et als.* before the bill was filed? Will you state upon whose information was the bill framed by the solicitor, in reference to the parentage, citizenship, age, education and connections of the plaintiff? Did you not furnish to him infor-

mation corresponding with these averments? And were not the averments made upon your statement of them as facts?

Answer. I did; the bill I think was framed upon the information of Drury Thompson and myself, and my recollection is, that I instructed the solicitor to locate Collins as a citizen of the State of Missouri.

66th. When was Collins advised of the averments above referred to? Did he know of them at the time of his arrival in Mobile in 1845, or shortly after? Did he in any conversation with his solicitors or with you, complain of, or affirm any mistake or misrepresentation to have been made?

Answer. He had conversation with me on the subject after his arrival in Mobile, in 1845, from which I infer he was aware of the averments in the bill. I never heard any conversations that I recollect of on the subject, between him and his solicitor. Collins complained to me in 1854, about being located as a citizen of Missouri, and said our object was to recover the property he believed, and keep it, so that he would not know anything about it.

57th. Did you, in the summer of 1851, or at any other time, travel with Collins into Kentucky, Ohio, Pennsylvania, or other States? On what mission did you go? Who were to share in the property you expected to find belonging to Joseph Collins, and in what proportions? Were there any writings then drawn between the plaintiff and defendants, and yourself on that subject; and who has them, and what are the terms and effect of them? What contract then regulated the parties in reference to that property? Who furnished the money for your and Collins's expenses?

Answer. I did—to look after his lands in Pennsylvania and Ohio. Collins was to have one-third, Campbell and Cleveland one-sixth each, Thompson one-sixth, and myself one-sixth. I do not recollect that any writings were then drawn. The agreement or understanding as to the interest of each is stated above. Collins told me that Duke W. Goodman advanced him five or six hundred dollars. He sold a portion of the Ohio land to the Hon. Thomas W. Key, of Cincinnati, for five hundred dollars. If any writings were drawn, I refer to them; I have none.

68th. Was not the power of attorney inquired about in the 60th cross-interrogatory, acknowledged before a notary or justice of the peace? Who has that power? When and where did you last see it? What were the contents of the power? If you have the power, or can procure it or a copy, attach it to your deposition, and say whether you can or cannot procure it.

Answer. I believe the power inquired of, or some paper having the same object in view, was acknowledged before a notary or a justice of the peace. I do not recollect seeing it since the day it was drawn. I hereto attach a draft marked Exhibit C, in the handwriting of Drury Thompson, furnished the commissioner by Chandler, Smith & Herndon, which is the only one I can procure. I do

not know who has any other except this. This may be the first draft. I do not now recollect further particulars.

69th. Were you acquainted with the contents of those letters addressed by Collins to Judge Campbell, appended to his "Statement of facts," attached to the answer of James Campbell in this cause, before they were sent, or either of them? Did you aid in the preparation of either of them, or any similar letters, or advise in regard thereto? Were you consulted on the subject of the present bill before it was filed?

Answer. Collins showed me the Citronelle letter—the only one I saw before it was sent. I read it hastily, and handed it back without one word of reply. The other two, or their contents, I knew nothing of until long afterwards, when one or both were shown to me by Mr. Chandler. Some days previous to the date of the Citronelle letter, in order to endeavor to get the matter amicably settled, I wrote a letter to Judge Campbell, setting forth Collins's alleged grievances and causes of complaint against Thompson, Cleveland, and James Campbell, and myself, as near as I could understand them, which I first showed to one or more of the firm of Chandler, Smith & Herndon, and Mr. Chandler objected to the latter part of the letter. I did not alter it, and showed or handed it to Collins. He refused to sign it. Not having the letter, or any copy of it, I cannot speak fully as to its contents. This letter was written for Collins to sign. What has become of it, or what was afterwards done with it, I do not know. I was not consulted.

70th. Did the charges in the bill in reference to Judge Campbell originate with you; or were they suggested by you? Why did you give a draft or statement?

Ansr. I originated no charge in the bill against Judge Campbell. I did not see the bill before it was filed. I gave a statement, which is explained in my answer to the 47th cross-interrogatory, and possibly some charges may have been founded on that statement. I have not the original statement, or a copy of it, to enable me to answer more fully.

71st. Did Collins, at any time before his departure from Mobile in the summer of 1855, ever express to you his belief of any such charges as are contained in the bill in reference to Judge Campbell, or ever suggest them to you as probable facts in the case, or that they would form any part of the bill?

Answer. He did, before he left for Texas in 1855, make grave and serious charges against Judge Campbell. He made no reference to the fact that they would form any part of his bill, that I now recollect.

72d. Have you any reason for supposing that these charges and allegations are the result of a long-subsisting feeling of dislike or animosity on the part of the solicitor of the plaintiff towards the judge of this court, and that they were not the suggestions of the

mind and feelings of Collins? State the facts that led you to this conclusion. Do you know of any such feeling?

Answer. None that I know of. I know of no such feeling.

73d. What connection with this suit did the pretended removal of complainant to Texas have? Do you not know that his interest is in Alabama; that he did not like to reside in Texas; that Mobile was his permanent home? Do you not know that when he pretended to remove to Texas he contemplated this suit, and had arranged to have it brought? Did he not, when he left, intend to return to Alabama, and make it his home for life? Who was his agent in Mobile during his absence in Texas? Does he not own a dwelling at Citronelle in Mobile County? Did he not pay five thousand dollars, or some large sum for it? Does he not own it? Has he not left a tenant there without his paying rent? When he pretended to remove to Texas, did he not leave his furniture and slaves there? Is not his furniture still there, and how long since he took his servants away? Did not he and his family live there up to the time of his departure?

Answer. I do not know further than what he said, which was as follows: That his wife was in very bad health, being sick and uneasy when he was out of her sight; that he thought she required the attention of her mother and relatives; that he feared personal violence would be committed upon him, and he did not feel himself free from danger if he remained in Mobile; and sometimes spoke of leaving Mobile and going to Mississippi; and I do not recollect now many other things he said. I know he has large interest in Alabama. I know he did not like to live in Liberty—where he came from—and, for several years after he came here, he intended to make Mobile his permanent home. He told me before he left in 1855 he contemplated this suit, and had arranged to have it brought. He said he should remain with his wife's relations until she got well or died. I do not know whether he intended to remove to Alabama, and make it his home for life. K. B. Sewall was his general agent. And he left a lease with me to deliver to one Jenks for his Citronelle property, which I did not wish to take, and asked him to hand it to John Rolston, Esq. He replied that there was nothing to do but hand it to Jenks. Jenks did not come, and in this way I got into the management of his Citronelle property during his absence from Mobile in 1855. He did own a dwelling house at Citronelle; paid and promised to pay five thousand dollars for it, as he told me. I learn he sold it a short time since. He rented it to Jenks in 1855, but Jenks failed to take it, and I rented it to Black & Alford for $500 per annum—the same Jenks had agreed to pay for house, furniture, and two or three negroes. I have had no agency of the property since his return, nor anything to do with it. When he went to Texas, he left his furniture and slaves, except one which he took with him. I do not know of my own knowledge whether his furniture and slaves are or are not now there. He and

his family lived there up to the time of his departure for Texas in 1855.

74th. Why were you not made a party to this bill? Did not Collins promise that you should not be?

Answer. This is answered in my answer to 52d cross-interrogatory.

75th. Were not the first threats of a suit designed to extort a payment from James Campbell of ten thousand dollars, or a sum of that kind? Who was to share in the sum he was expected to pay?

Answer. The first threats I heard were in the fall of 1851. Cleveland first, and Collins subsequently, told me that he, Collins, threatened to dispute the deeds. Collins further said that James Campbell complained of paying out so much money for him for slate, and that he replied to Campbell, he did not ask him to do it, and concluded by saying that if he heard of any more of James Campbell's insolence, he would make him pay ten thousand dollars before he would affirm the deeds. No one was to share in the ten thousand dollars that I know of. I certainly was not.

76th. In the contests that have arisen between plaintiff and defendants, have you not taken sides with plaintiff? Did he have an office with you? if so, how long, and up to what time? When did he change it? Did you not act as agent for him in several matters after he left for Texas?

Ans'r. I have not taken sides with the plaintiff, further than that when I thought he was right I sided with him; when I thought he was wrong, I sided against him. He never had an office with me further than to come to Thompson's and my office which were together, whenever he wanted to. He neither paid rent, nor was any expected of him or from him. He kept a desk at my room, adjoining my bed-room, a part of the time, and used to come to our office from 1851 to 1856. I acted in regard to his Citronelle property as before stated.

77th. Who informed Judge Campbell that there were certain papers against you and Cleveland to be surrendered to you and to him, and requested Judge Campbell to see Mr. Hallett on the subject and to get them? Do you recollect meeting Judge Campbell at the door next the Alabama Life Insurance and Trust Company, leading to Judge Campbell's own office, and making that request of him, and he assented to comply? State all that passed then.

Answer. I recollect that I informed Judge Campbell that Wm. R. Hallett, as executor of Joshua Kennedy, had a claim against me of a considerable amount. I wanted him to inquire, and if so, to take it up on the settlement with Hallett. I do not know or recollect who informed him about Cleveland. I requested Collins to ask Judge Campbell to get up my claim. I had several conversations with him on the subject of the claim against me, and probably some conversation about Cleveland. I recollect no conversation at the door of Judge Campbell's office. I do not recollect of his assenting

to comply, until I served a notice on Collins that I would hold him responsible for one-sixth of a large amount of money. Judge Campbell did then, as he informed me, ask Hallett, who said, that he had no claim against me. And Hallett subsequently told me the same.

78th. After the disagreement between Thompson and Judge Campbell in April, 1851, were you not deputed to carry on the business intercourse with him, and did you not then take the place that Thompson had fulfilled in conducting that intercourse?

Answer. I do not recollect any deputyship, but went forward, and endeavored to act for the interest of all parties.

79th. You will please state in detail every act in which Collins participated, recognizing the deed of February, 1851, and the subsequent power of attorney of December, 1851. State all moneys that were borrowed; all contracts that were made; all leases that were made; all divisions of money, or notes, or bills, or other evidences of demand, that were divided between the parties.

Answer. I cannot recollect in detail, or state every act in which Collins participated. In recognizing the papers spoken of, Collins and Cleveland acted generally as the agent of the other parties, in building, improving, renting, leasing, and whatever they thought was necessary, I suppose, for the interest of all. They borrowed ten thousand dollars from Wm. Jones, Jr., and mortgaged some of the property to secure the payment. They got some of the notes raised for property discounted in bank, as I understood. I cannot state all contracts that were made. I recollect two that I drew; one for Ellis and Kirkbride, and the other for Pond. I do not know all the leases that were made. Six large stores were built, and other improvements made. I only know of a division of nine thousand dollars made according to our respective interest. No notes, or bills, or evidences of demand were divided between the parties that I know of.

80th. Do you not know, that at one time, perhaps in 1854, Collins wished to go to Texas, and that Cleveland was insisting on a settlement of his and Collins's action under the power of December, 1851? If Collins did not urge as a reason for not settling the urgency of his trip to Texas, and did not promise that if Cleveland would forego a settlement at that time, he would return shortly, and make a settlement and account?

Answer. I do not know that Cleveland insisted on a settlement of their acts as agents for the parties. Thompson and myself also wished a settlement. Collins did urge the necessity of his trip to Texas, and promised on his return that he would make all the settlement and showing that was necessary to be made.

81st. Did not Collins return, and did not he and Thompson spend much time in preparing the accounts for a settlement.

Answer. Some time after his return Collins and Thompson spent much time in preparing the accounts for a settlement.

82d. Do you not know that at one time a large sum, about nine

thousand dollars, were distributed among the parties by Collins & Cleveland, as products or results of the property, under their action under said power?

Ans'r. In the spring of 1852, nine thousand dollars was distributed as heretofore stated.

83d. Has not Collins told you of sums that he had used derived from the property, and admitted his obligation to account for it? Did he not admit that he and Cleveland had at one time used two thousand dollars, for which they were debtors?

Ans'r. The witness answers this interrogatory in the affirmative.

84th. When Collins pretended to remove to Texas, did he not intend to return with his family? Did he not tell you that he intended to do so; that he took his wife to see her mother? Is he pursuing any business in Texas? What sort of a house is he living in? How does it compare in comfort with the one he left? How does the health of the part of Texas, to which he has pretended to remove, compare with the healthfulness of the neighborhood of Citronelle. If you have not seen Collins's residence in Texas, state how Collins has described to you the house he lives in there.

Answer. Witness refers to his answer to 73d cross-interrogatory, for answer to so much of this interrogatory as he can answer. I know nothing of his business in Texas, nor what sort of a house he is living in, nor has he described it to me, nor do I know of its comparative healthfulness.

85th. Have you any letters from Collins in regard to the suit against Kennedy's heirs? Did he not in one of those letters state that he was at one time sick for a great while, without a dollar, and that if he was not certain of gaining the suit, he would leave Texas, and go to some other place, or words to that effect? Attach said letter or letters to your deposition?

Answer. I received a letter from Collins to the purport inquired of, and attach a copy of it as Exhibit D. It is the only one I have received on that subject.

86th. At the time the deed of February, 1851, was executed, did not Thompson, Cleveland and Campbell, at your office, execute an agreement to convey to you an interest in the property conveyed by Collins in the deed of February, 1851? And was not Collins present, and did he not know all about it?

Answer. The witness answers this interrogatory in the affirmative.

87th. When the deed was about to be executed, did not Thompson require that all former agreements between himself, Cleveland and yourself, should be given up, it being then considered by Collins and all parties that this deed should be a full settlement and adjustment of all former agreements between them in relation to the property conveyed by the deed in February, 1851? Did not you finally but reluctantly give them up, and did you not have certified copies made before you did it?

Answer. My recollection is, that at the meeting at my office in

February, 1851, it was understood that the settlement should be final and all the old papers given up. Some time afterwards Thompson came to me and stated that his deed was burned up and papers also; that he burned them which had been previously made to the final settlement, and demanded mine. After having copies made I gave them to him. WM. D. PRIMROSE.

Direct and cross-interrogatories filed 26 Oct., and 1st Nov., 1856, and notice of examination required.

Exhibits and Papers attached to the Deposition of William D. Primrose.

Exhibits.

(A.)

Articles of agreement between Thompson, Cleveland and Primrose, as to their interest, etc., in the land recovered of Kennedy, dated 3d Dec'r, 1844, and is Exhibit K to Thompson's answer. See the same copied page 272 of transcript.

(B.)

Articles of agreement entered into between the same parties on the 20th November, 1842, as to their interest, etc., and is Exhibit J to Thompson's answer. See the same at page of transcript 270.

(C.)

Agreement to carry out power of attorney drawn from Drury Thompson and James Campbell to Sidney E. Collins and William F. Cleveland, as to improving property recovered, etc., and is Exhibit H to Thompson's *answer*. *See same page*, 259 of record.

Exhibit D.

Liberty, Texas, December 10, 1849.

DEAR SIR: It has been many days since I heard from you (not since I saw you one year ago), and thinking that perhaps you would like to hear from me at the termination of a very sickly season, this will inform you that I am still living, though considerably the worse of wear. I have never had such a year. Since March I have trying to work at my trade (carpentering), and from that until now have not been able to make more than two months' time. My family has also been very sickly. I am perfectly satisfied that it will not answer for me to try to live in this low country, and if I am spared to see the opening of another spring I shall hunt a more healthy region. I am getting poorer, older and weaker every year. I am so weak at this time that I cannot raise a five dollar bill, but where I shall go depends upon circumstances. I think it most probable that I shall go to the northwestern portion of this State, though if the Supreme Court should reach my case and dispose of it favorable to my interest, in that event I shall bid farewell to the land of Texas. We have had a great number of deaths in our community this season, among the number are Doct. J. M. Clayton and his mother, and George

W. Miles, former Probate Judge, and Judge Branch's eldest son (Wharton). Miles had just come into possession of an inheritance of $20,000 left to him by his brother in New York, and had opened a large store at Liberty, and was doing a fine business. But death, the common leveller of the human family, has called him to his long home, and what is more saddening, I fear he was illy prepared for his departure. He has left a wife and six children, and numerous friends to mourn his loss. I learn from J. A. Campbell, that it is exceedingly doubtful whether the Supreme Court reaches my case this season. I wish you would notice the progress of business, and let me know what is going on. Let me hear the last number of cases reported up to the receipt of this letter; let me hear who occupies Drury's old stand. How the Mobile and Cincinnati Railroad progresses, and what has been done in the legislature in relation to banks. I send you a Texas religious paper containing Gov. Wood's message. He talks like fighting for Santa Fee; I do not think this measure will turn out like the 54, 40, or fight. I think Texas will fight. Let me hear from you soon. Your friend,

SID. E. COLLINS.

To W. D. PRIMROSE.

Exhibit E.

Liberty, December 21st, 1850.

DEAR PRIM: I have just returned from Western Texas after an absence of four weeks, and have found all well, and am in first health, and finding your letter dated Cincinnati, Oct. 28th, it put me in good spirits. I am under many obligations to you for the matters it contained, and as you said the news was too good to be kept a secret, truly I find it a hard matter to keep it from my many inquiring friends, and especially the inquiries of my wife. I fear I shall not be able to keep it much longer, so write to me that I may make things public as soon as you dare do it. You need not be surprised to see me in Mobile before spring. In haste, your friend,

S. E. COLLINS.

Exhibit No. 1.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that I, Sidney E. Collins, of Liberty County, Texas, have appointed, and do appoint Drury Thompson my sole attorney, in my name, stead and behalf, to conduct and prosecute the suit in the Circuit Court in my favor against Wm. R. Hallett, Robert L. Walker, executors, and other persons, as heirs and claimants under Joshua Kennedy of a parcel of land in Mobile, and which I claim. I give my attorney full authority to compound, settle, compromise, adjust the said suit as he may think fit; to accept deeds and conveyances, and to give all necessary discharges, releases and acquittances, to settle the boundaries of the lands to be acquired,

to enter into possession thereof, to make leases and collect rents, and further to do and receive whatever he may consider proper in regard to the prosecution, compromise and adjustment in the same, or which may arise therefrom, I hereby giving to him full power and authority in this behalf.

Witness my hand and seal at Mobile, 23d April, 1851.

(Signed) SID. E. COLLINS, [L. S.]

In presence of WM. D. PRIMROSE,
WM. H. PLATT.

Exhibit No. 2.

Primrose's Consent to Power Attorney from Campbell and Thompson to Collins and Cleveland.

THE STATE OF ALABAMA,
Mobile County.

Whereas Sidney E. Collins, Drury Thompson, James Campbell, William F. Cleveland, and William D. Primrose are jointly interested in all that tract of land recovered by the said Sidney E. Collins from the heirs and executors of the late Joshua Kennedy, deceased, in the United States Court at Mobile, by a decree of said Court, and the said decree affirmed by the Supreme Court of the United States on the 27th of December, 1850, which land is situated in the city of Mobile, east of Royal Street, running to the river Mobile, north of St. Louis Street, south of State Street, and the property of Hall & Carter, James Campbell, and others, north of St. Anthony Street, and west of the Mobile River, and are also jointly interested in all the rents and profits thereof; and whereas James Campbell and Drury Thompson aforesaid have this day executed their certain power of attorney to said Sidney E. Collins and Wm. F. Cleveland, authorizing them to mortgage and raise money on the block east of Commerce Street to build stores and improve the same, and to sell that part of said property north of St. Anthony Street, also one hundred and fifteen feet east of Water Street by one hundred feet deep, and also to collect all the rents of said property, and to pay off and discharge all debts for which the property is now bound for, &c. &c.; now, therefore, for and in consideration of the premises, I, William D. Primrose, do hereby give my consent to the terms and conditions of the said power of attorney given by said James Campbell and Drury Thompson to Sidney E. Collins and William F. Cleveland, for the uses and purposes of carrying out the objects of the parties as expressed in said power of attorney, but with this condition, that if the said William D. Primrose shall wish to sell and dispose of his interest in the said property, or any part thereof, then at any time, by giving notice in writing to said Sidney E. Collins and the said Wm. F. Cleveland, the said power of attorney given as aforesaid by said James Campbell and Drury Thompson to the said Sidney E. Collins and Wm. F. Cleveland, shall be revoked, annulled, and made void to all

intents and purposes, excepting only all *bonæ fide* contracts by them made prior to the aforesaid notice being given to annul said power of attorney.

As witness our hands and seals, this day of December, 1851.

[SEAL.]

Executed in triplicate in presence of

Exhibit No. 3.

Ratification by Wm. D. Primrose, executed on the 20th day of December, 1851, of the power of attorney from Drury Thompson and James Campbell to Sidney E. Collins and Wm. F. Cleveland, and which is Exhibit A to the answer of the defendant Cleveland. See page 343 of transcript.

Exhibit No. 4.

CITY CLERK'S OFFICE,
CITY OF MOBILE, April 14th, 1857.

A copy of the city assessment from the book for the year 1851, William De Forest Holly, F. G. Kimball, and Henry Hunt, assessors, of the following described property to the estate of Joshua Kennedy, to wit: 245 feet of land and buildings thereon, extending east from Royal Street, crossing Water, Front, and Commerce, to channel of Mobile River, with the wharves known as Washington and Kennedy's in front thereof, and water privileges, comprising squares Nos. 201, 202, and 203, excepting lot of one hundred feet, and the buildings thereon, on the northeast corner of Water and St. Louis Streets, in possession Campbell, Waring & Wiswall, the whole bounded north by St. Anthony St., south by St. Louis St., east by channel Mobile River, and west by Royal Street. Assessed at $125,000 dollars. The above assessed to the estate of Joshua Kennedy.

I hereby certify that the above is a true and correct copy of the assessment book for the year 1851, of the above property, from the books which are now in my possession and custody. Given under my hand and the seal of the city, this fourteenth day of April, 1857.

[SEAL.] D. L. CUMMINS.

Papers attached to the said Deposition.

Exhibits and Papers.

MOBILE, January 23d, 1857.

Messrs. Chandler, Smith & Herndon, solicitors for D. Thompson, Wm. F. Cleveland, and James Campbell, defendants to a bill of S. E. Collins in the Circuit Court of the United States of America at Mobile, I hereby give you notice that I request the production of the deed of Sidney E. Collins to the defendants, executed in triplicate, dated February 15th, 1851, to D. Thompson, James Campbell, and Wm. F. Cleveland, by S. E. Collins. I wish the originals produced to F. S. Blount, Esq., commissioner, so that I may inspect them, to refresh my memory, and to see if I can recognize in whose hand-

writing the original deed or deeds executed in triplicate are in, before I answer on the subject the interrogatories and cross filed in said cause to me. Respectfully, &c., WM. D. PRIMROSE.

(F. S. BLOUNT, *Com'r.*)

We accept service of this notice. Mobile, January 23d, 1857.

CHANDLER, SMITH & HERNDON.

Wm. D. Primrose's Notice to produce Papers, etc.

MOBILE, ALA., January 26, 1857.

MESSRS. Chandler, Smith & Herndon, solicitors for D. Thompson, Wm. F. Cleveland, and James Campbell, defendants to the bill filed in the case of S. E. Collins against them in the Circuit Court of the United States of America at Mobile, Ala., said cause now pending, you will please take notice that in addition to the deed dated 15th February, 1851, and *and* executed in triplicate, made by said Collins to D. Thompson, Wm. F. Cleveland, and James Campbell, the originals required to be produced to F. S. Blount, Esq., commissioner, as per notice served upon you by *by* the said commissioner, 23d of January, 1857, I require you to produce to the said commissioner, for my examination and inspection, to refresh my memory and to enable me more fully to answer the interrogatories and cross-interrogatories filed to me in this cause, I request that you produce the originals of all deeds, papers, letters, and other papers in writing in any way or manner inquired about in the interrogatories and cross-interrogatories filed in the case, or intended to be used in any other witness' deposition, or to be referred to by any witness in his or her testimony, and particularly the following papers, either in your possession or that of these defendants Thompson, Cleveland, and James Campbell, or John A. Campbell, or Campbell & Chandler:—

1st. A letter I wrote Wm. F. Cleveland in December, 1843, just a short time before Thompson and myself went the Texas, 25 Dec., 1843.

2d. The notice served on James Campbell by U. States Marshal in February or March, 1844, in regard to the rents of certain property, notifying him not to pay the same over to the branch of the Bank of the State of Alabama at Mobile, that they belonged to Sidney E. Collins for the last six years prior to that time.

3d. The contract for the conditional fee with Campbell & Chandler for $25,000, made by Thompson with the said attorneys prior to the bringing of the suit in 1844, and afterwards, I think in 1849, reduced $5,000, and ratified by Collins.

4th. A letter written by me to Drury Thompson, from New Orleans, in the winter of 1845, and all other letters by me written to said Thompson from that time to 1856; and also all letters written by me to Wm. F. Cleveland, from Dec., 1843, till July, 1844, when all our intercourse ceased.

5th. All my letters written to John A. Campbell, Daniel Chandler,

or to Campbell & Chandler, 1839 to 1853, or after that time, relating to the Collins property in any way, or regarding the same; or any other letter of mine, written to any other person or persons, relative to the original suit or the present one.

6th. A paper signed by S. E. Collins, dated 25th February, 1851, containing a statement of accounts, &c., value of the estate of Joshua Kennedy, said papers addressed to John A. Campbell, Esq.

7th. The contracts for building the 6 stores made with Ellis & Kirkbride and the two Ponds, and all other contracts relating to the building and improving the property north of St. Louis Street, by Collins and Cleveland, from July, 1851, to 1854, with the leases, insurances, policies, and all other papers or writings made by them, or either of them, during their agency for Thompson, James Campbell, and myself, all such papers as will enable me to refresh my memory in regard to their acts as agents, going to show, or having a tendency to show the acts of Collins ratifying the deed of 1851, to Thompson, Cleveland, and James Campbell, and my deed from Thompson, Cleveland, and James Campbell same date.

8th. The statement Collins gave to John A. Campbell in regard to the settlement with Col. Hallett in writing in 1851. The bond of Cleveland also taken up in the said settlement.

9th. All of Collins' letters to Thompson since our visit to Texas in 1844, also his letters to John A. Campbell, or to Campbell and Chandler, since January, 1844, up to this time.

10th. My printed copy of the record in the suit of S. E. Collins *vs.* Kennedy's Heirs, which I obtained in Nov., 1851, from the Hon. Reverdy Johnson, and which has his name written on it.

11th. Deed from Collins to Thompson for ½ the land sued for, dated in 1849, and one or more deeds I drew for Thompson to sign to Collins in 1849, reconveying back to Collins ½ the land sued for.

12th. The original deed, powers of attorney, and all other papers executed by S. E. Collins and wife, to Thompson, in Texas, in January, 1844.

13th. The power of att'y, or powers of attorneys inquired about in the cross-ints. to me, and all other documents and papers inquired about in the said cross-ints. or the direct-ints. and the papers drawn by Thompson binding Collins and Cleveland to act faithfully, and give true accounts, &c., one to him, one for James Campbell, and the paper I signed, authorizing them, Collins and Cleveland, to act for me in the premises, and two of these papers being the papers James Campbell told Thompson "he would see him in hell, if he was Collins and Cleveland, before he would ever sign them."

14th. All papers, letters, and documents, made as exhibits to the bill, or to the answers in this cause now pending in said Court between S. E. Collins, and Thompson, Cleveland, and James Campbell, and all papers or documents attached to the deposition or depositions of John A. Campbell in this cause, or to any other deposition

of any witness, and the letters referred to in J. A. Campbell's statement, appended to James Campbell's answer in this cause.

15th. The deed or contract from Thompson, Cleveland, and James Campbell, to me, dated 15th February, 1851, or any letter or letters of mine referred to, or that may be referred to by J. A. Campbell in his testimony in this case.

16th. All letters written by me to any one, either in your possession, or John A. Campbell, or these defendants, in any way or manner regarding or mentioning the original Collins' suit, the present suit, or referring to either, and copies of the letters of John A. Campbell, or of Campbell and Chandler, or either of them, to Collins, or from John Sergeant, since January, 1844, till the present time, their replies thereto (the original letters).

17th. A letter I wrote William F. Cleveland, after Collins told me that Cleveland and him had used $2,000 (the note of Goodman and Fettyplace), and discounted it in the Southern Bank of Alabama, at Mobile; that Cleveland requested him to keep it secret from Thompson, James Campbell, and myself, said letter written in the spring of 1852 or 1853.

18. A letter I wrote S. E. Collins, in February, 1851, not to settle with Hallett, that I would hold him responsible for one-sixth of one hundred and forty thousand dollars, for account, &c.

19. A letter I may have written to John A. Campbell, or Campbell and Chandler, after the final settlement of the ac't, boundaries, and all other matters with defendants, acknowledging the satisfaction of us all with these gentlemen, dated in eighteen hundred and fifty-one.

20th. All other deeds, papers, letters, or documents referring in any wise or relating in any way to the original suit, or the present suit, or relating to the property, or to the counsel in the original or present suit, or to Messrs. Thompson, Cleveland, James Campbell, or Collins, in any way, manner, or shape, whatever. I require and request that you will produce to F. S. Blount, Esq., Commissioner in this case, the original papers called for by this notice, for my inspection, to refresh my memory, and enable me to answer the interrogatories and cross-interrogatories in this cause, as many years have passed away since some of these occurrences. My recollection will be greatly enlightened by an examination of these letters, deeds, papers, and documents, by reading and inspecting the same. I cannot give my answers satisfactory and truly without these papers are furnished me. Respectfully, &c.,

WM. D. PRIMROSE.

Served a copy of the within notice on Chandler, Smith, and Herndon, 26th January, 1857. F. S. BLOUNT.

Paper endorsed, "F. S. BLOUNT, *Commissioner.*"

To Messrs. Chandler, Smith, and Herndon.

Gentlemen: Mr. William D. Primrose is now present with me,

and requires of you the papers called for by his several notices to you, heretofore handed to you by me, or he will decline answering any interrogatories in which said papers may be necessary to enable him to answer advisedly. Yours respectfully,

F. S. BLOUNT, *Commissioner.*

Mobile, April 11th, 1857.

Notice served 3 o'clock, April 11th, 1857.

F. S. BLOUNT, *Commissioner.*

F. S. BLOUNT, ESQ., (Commissioner).

Dear Sir: In reply to the notice of William D. Primrose to produce certain deeds, letters, papers, &c., we answer, that we are willing to produce all the letters, papers, and deeds in our possession, that are referred to in the interrogatories or cross-interrogatories to the witness. We have not a copy of the interrogatories or cross-interrogatories, and you will therefore oblige us by specifying the deed, letter, or paper, to which reference is made. The two deeds executed 15th February, 1851, we have exhibited to Mr. Primrose. They are now in the possession of Mr. Hurtel, Commissioner of plff. to be proved. Any deed, letter, or paper, that the witness is entitled to see, if in our possession, we will submit it to his inspection by placing it in your possession. Let us know the deed, letter, or paper, that is referred to in the interrogatories, and which the witness wishes to see. Yours respectfully,

CHANDLER, SMITH & HERNDON.

April 11th, 1857.

The foregoing deposition of the witness, William D. Primrose, Esq., taken by interrogatory and commission, was taken, subscribed and sworn to, on the 14th day of April, 1857, at the city of Mobile, before F. S. Blount, Esq., the commissioner, and was filed on said day in my office. GEO. E. HOLT, *Clerk.*

No. 2. *Deposition of Andrew W. Dismuke, of Texas.*

The said Dismuke, a witness on behalf of the complainant in said cause, in answer to the direct and cross-interrogatories propounded to him, deposes and says on oath as follows:—

Int. 1st, direct. Do you know the parties to this suit, or any, and which of them?

Answer. I know the plaintiff, Sidney E. Collins, and the defendant, Drury Thompson.

2d. When and where did you first become acquainted with Drury Thompson, and who was with him at the time?

Answer. I became acquainted with Drury Thompson, I think, in January, 1844, in Liberty County, in the State of Texas. There was a gentleman travelling with him at the time by the name of Primrose, and, I think, a lawyer.

3d. Do you know anything of any transaction between Thompson

and Collins in Liberty, Texas, in January, 1844? If yea, what was it, and how did you obtain your knowledge of it?

Answer. I was present when the plaintiff, Sidney E. Collins, executed a deed to some land or lands in the city of Mobile, in the State of Alabama, to said Drury Thompson, I think, in January, 1844, in the town of Liberty, Liberty County, in the State of Texas. I think I was one of the subscribing witnesses to the deed, and heard it read.

4th. Did Thompson make any statements as to his objects in getting a deed from Mr. Collins, or the uses he intended to make of it? If yea, set forth fully and particularly all that you heard him say on the subject.

Answer. Mr. Thompson said, in my presence, that the Kennedys, or a certain one of the Kennedys, I forget which, had brought suit against him for certain property in Mobile, that he thought included his homestead, and were annoying him a great deal, and that his object in getting this deed from Collins was to enable him to bring suit against Kennedy, or the Kennedys, and annoy him or them, so as to get the advantage in the settlement of the suit against him. He said he had the best lawyer in the State of Alabama, and that by getting this deed, and bringing suit, he could frighten him or them into a compromise. This is about the substance of his statement, as near as I can recollect.

5th. Did Thompson say anything in reference to his recovering the land of Collins embraced in the deed you witnessed? If yea, what did he say on this subject? Set forth the same fully and particularly.

Answer. Yes, he did say a great deal. He stated that he had no idea or hope of recovering the land conveyed by Collins in the deed I witnessed, and gave a great many reasons why he thought so, and that his only object in getting the deed was to bring suit against Kennedy, or the Kennedys, and annoy him or them, so as to get even for the annoyance to him; and that, as he had the best lawyer, and a man that they were afraid of, he might possibly frighten him or them into a compromise. After the deed was signed he said that if he should succeed in getting a compromise, all he obtained he would give to Collins. This is about the substance of his statement to Collins in my presence at the time of receiving the deed.

6th. Did Mr. Collins receive any consideration for executing the deed which you witnessed? If yes, state what it was.

Answer. He did not receive any consideration in my presence, or anywhere else within my knowledge, for executing the deed. There was a consideration, I think, of several thousand dollars expressed in the deed, but it was merely put in to make it appear that a consideration was given to give character to the suit.

7th. What part did Primrose take in the transaction between Thompson and Collins; or what connection did he appear to have with Thompson? Did Thompson make any statements as to the character or profession of Primrose?

Answer. Primrose was a lawyer, and seemed to be acting the part of a friend and counsellor of Thompson. Thompson introduced him as a lawyer and a gentleman; and, from Thompson's statements, he seemed to be travelling with him as his counsellor.

8th. Did Thompson state what induced him to visit Liberty in January, 1844? If yea, state fully and particularly all that he said on this subject.

Answer. He did. He stated that he had some special business in western Texas, and, having arrived at Houston on his way, he found that it was so inconvenient to travel at that season of the year, and that the time was so short until the Mobile court, of which he was clerk, that he would not have time to make the trip, attend to his business, and return in time for his court. Consequently he had concluded to return to Mobile, and make the trip to western Texas and attend to his business there after the Mobile court. But that, just before he was about to leave for Mobile, he heard some person mention the name of Sidney E. Collins, and that Collins and himself having been boys and schoolmates together, and very intimate when boys, and having also heard or supposed that Collins was dead, he inquired of the person what he knew of Collins, and was informed by him that he was living at Liberty, on the Trinity River, and finding that there was a boat just ready to leave for Liberty, he determined at once to go and see him, as it would only take a few days, and he would still have time to arrive in Mobile in time for his court. This is substantially the reason he gave for coming to Liberty. After the deed was signed and delivered, I heard Mr. Thompson, in conversation with Collins, say that he would return to Texas, to attend to his business in western Texas, and insisted that Mr. Collins should accompany him on his trip to western Texas, and that he would leave his double-barrel shot gun with him, and that they would take it along with them to kill game, to which Mr. Collins assented.

9th. How far did Mr. Collins reside from Liberty? Did Thompson spend his nights at Mr. Collins' house, or any of them? State all you know on this subject.

Answer. Mr. Collins resided at the time about three or four miles from the town of Liberty. Mrs. Collins was sick at the time, and I was attending her as a physician. At one time whilst going to visit her, I met Collins and Thompson a short distance from Collins's house, immediately after breakfast, and I understood from their conversation that Thompson had just come from there. At another time, immediately after leaving Collins's house, I met Mr. Thompson, Mr. Collins and Mr. Abbott, and understood from them that they were going to Collins's.

10th. Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer hereto.

Answer. Thompson also stated to Collins, that a man named Innerarity, who was the executor or administrator of his father's estate, had made out an account against the estate, and had obtained an order of the Probate Court to sell, and had sold the same property to Kennedy, and had given him a deed for it, which was of record.

Cross-interrogatories to the said Witness, and his Answers thereto.

1st. Are you related to Sidney E. Collins? If not, are you not a connection of his? If so, what is the relationship or connection?

Answer. Mr. Collins's wife and my wife are sisters; this is the only connection or relationship existing between us within my knowledge.

2d. How long has it been since you have seen Drury Thompson? How often have you met with him, and when and where was it?

Answer. I have not seen Mr. Thompson since I met him, Mr. Collins and Mr. Abbott, going to Mr. Collins's house as stated in my answer to the *ninth* direct interrogatory.

3d. If you profess to remember any conversation you had with, or heard from Drury Thompson in 1844, can you pretend after the lapse of twelve years, to state it with accuracy?

Ans'r. In my answer to the direct interrogatories, I have stated the conversation as particularly as I can, and do profess to remember very distinctly those conversations, although twelve years may have elapsed.

4th. Has not Sidney E. Collins been for the last six months, or for several months past in Texas, and near you? Has he not explained to you what was the nature of the proof he wished to obtain? and has he not held repeated conversations with you in order to bring your mind to assent to what he desires to prove?

Answer. Mr. Collins, during the last six months, has spent some time in Texas with his family, and within twelve or fifteen miles of my residence. I do not recollect that Mr. Collins explained to me the nature of the proof he desired in the case, but has told me within the last 12 months, that he intended to institute a suit against Thompson and others, and asked me to recollect as well as I could the conversation that I heard between Thompson and himself at Liberty, at the time Thompson was there and obtained the deed, and that he thought he should want my testimony in the case.

5th. Are you not promised anything, or do you not expect to be benefited in the event Collins succeeds in this suit?

Answer. I have not been promised anything, nor do I expect to be benefited in the least by the result of this suit.

6th. Did Drury Thompson seem to be a man free to express to, or in presence of strangers his business?

Ans'r. Mr. Thompson seemed to be very particular in expressing himself before any other person than Collins, myself and Primrose, on the subject of his business with Collins; otherwise, I thought him free and easy in his general conversation.

7th. If you shall pretend to narrate a conversation or conversations held with, or heard from said Thompson, please state minutely the circumstances under which such were held, where were they, what day of the month, and of the week were they held, and who was present?

Answer. I have stated as minutely as I can the circumstances under which said conversations were had in my answers to direct interrogatories. They occurred principally in the house of Franklin Hardin, in town of Liberty. Mr. Collins, myself, and I think Mr. Primrose were present. I cannot now recollect the precise day of the month, or of the week, but it was on the day the deed from Collins to Thompson was executed.

8th. Had Collins and Thompson been together when you heard such conversations? If so, how long before that time?

Answer. I so understood from them, I suppose from what I learned from them, that they had been together a day or two.

9th. Did such conversations occur at the time any deed was made?

Answer. The conversations alluded to in my answers to my direct interrogatories were had at the time the deed was executed, partly immediately before its execution, and partly immediately after.

10th. If you shall say that Thompson spent his nights at Collins's, state how you know it, or why you say he did. How do you know it? Did you spend such nights at Collins's house?

Answer. I do not say positively that Mr. Thompson spent his nights at Mr. Collins's. I suppose that he did from the fact that I met him and Collins going and coming from Collins's house, and Mr. Thompson informed me that he had seen Mrs. Collins, and was very anxious as to her health, and inquired of me particularly as her physician as to the nature of her disease, and the probabilities of her recovery. I did not spend any night at Collins's while Thompson was there.

11th. Do you not know that Thompson did not spend more than one night at Collins's house?

Answer. I do not know how many nights he spent there.

12th. Has not the bill in this case, or an abstract of it, or the substance of it, or parts of it been shown or read, or stated to you, and was it not done to prepare you to be a witness?

Answer. Neither.

13th. If you shall pretend to give any conversation held by Thompson, please state it exactly and fully, and then state how you are enabled so to state it.

Answer. I have stated in my answers to direct interrogatories as exactly and as fully with all the circumstances the conversations heard by me. I am enabled to so state it from my recollection of them, and the importance that I myself attached to them at the time. I know that they occurred in January, 1844, by reference to my books, where I charged Collins for attending upon his family that year.

14th. If you pretend to state any transactions or conversations between Thompson and Collins, please say how you came to be present, and how the same came to be done or said in your presence.

Answer. The reason that I was present at the time was because I met Mr. Collins in the street of Liberty, and he told me that he wished me to go with him to the house of Franklin Hardin, as he wished to introduce me to an old schoolmate and friend of his, when he was a boy, and an apprentice at the carpenter's trade in Mobile. I went with him, and was introduced by him to Mr. Thompson and Mr. Primrose, and afterwards was requested to remain and witness the deed.

15th. How far did you live from Collins's house in 1844, and what was your business?

Ans'r. I lived about three and a half miles from Mr. Collins on a farm, and was a practising physician.

16th. During Sidney E. Collins's last sojourn or stay in Texas, in whose house has he been? How often has he been at your house? How often have you and he talked about this suit?

Answer. During Mr. Collins's last stay in Texas I saw him at the house of Mr. B. B. Gayle, on the Medina River, about twelve or fifteen miles from this place. I do not recollect precisely the number of times he was at my house, but it was very few, not exceeding three or four times, and each time he remained but a short time. I think he has spoken to me about this suit once or twice.

17th. What memoranda, data or papers are you furnished with in giving your evidence, and who furnished such? With whom have you conversed with about this suit, and how often have you held such conversations?

Answer. I am furnished with none. I have conversed with no one about the suit except with Mr. Collins and the commissioners who take these answers that I now recollect.

18th. Do you owe Sidney E. Collins nothing? Is he not your security? Are you under no pecuniary obligations to him, and has he given or promised you no assistance in business or otherwise? If either, what is the extent and character of such, and when did they begin?

Answer. I owe him nothing. Some ten or twelve years ago he was my security on an administrator's bond, which administration has long since been closed. I do not think I am under any pecuniary obligations to Mr. Collins. He has not given or promised me any assistance in business or otherwise.

19th. Have you received no letter or letters from Collins or his attorney about this suit, or speaking of, or alluding to it? If so, append the same, or full and exact copies.

Ans'r. I received a letter from Mr. Collins about two weeks ago, dated at Mobile, Sept. 11th, 1856, in which, after speaking of his trip from this place to Mobile, and of his arrival there, he says: "I find my attorneys have filed their replication, so issue is now joined

and must proceed forthwith to taking testimony," &c., &c. This is all he has ever written me relative to this suit, if he has referred to it at all, which, however, I presume he does. The balance of the letter is relative to his wife's health, and I therefore consider it unnecessary as well as improper to attach hereto the originals or a copy. His attorneys have never written me a line on the subject of this suit.

20th. If under the last or general interrogatory of complainant you shall answer any matter, state how you know what will be material to the subject of your examination or of benefit or advantage to the parties, and how do you know what are the matters in question in the cause?

Answer. I am not prepared to say what is or what is not material to the subject of my examination, or of benefit, or of advantage to the parties. I do not really know what are the matters in question in this cause, having never seen the bill or answer, or any of the pleadings. A. W. DESMUKE.

Exceptions filed by Defendants.

Defendants except to the 7th interrogatory of complainant, because it asks for a conclusion of the witness and not for facts. To so much of the 8th interrogatory as asks if Thompson spent his nights at Mr. Collins' house or any of them, because the same is leading. To 10th, because it is general, and does not refer or relate to any particular matter, so as to enable the defendants to cross-examine the witness in reference thereto, and require notice of time and place of examining the witness.

CHANDLER, SMITH & HERNDON,
Solicitors for Defendants.

Direct interrogatories filed 26th September, 1856. Cross-interrogatories and exceptions filed 6th October, 1856.

GEO. E. HOLT, *Clerk.*

Exhibits to the Deposition of A. W. Desmuke.

MOBILE, Sept. 11th, 1856.

A. W. DESMUKE—Dear sir: I promised you I would write you and let you know how I got along, &c. Well, my trip from San Antonio to Powderhorn was anything but pleasant; we were fifty-six hours to the Horn. When I reached the Horn my feet and ankles were very much swollen, from long and steady confinement. The remainder of the way the trip was pleasant enough. I arrived here on yesterday morning at six o'clock. I find Mobile unusually healthy for this season of the year. There seems to be but few persons here. All the prominent men have gone to one to another of the watering places. I find my attorneys have filed their replication, so issue is now joined, and must proceed forthwith to taking testimony, &c. &c.

I am somewhat uneasy about the health of my wife, though the fever had quit her before I left her, but I fear it may return. Per-

sons with lung diseases are apt, and often do have a kind of hectic fever, and I fear Mrs. Collins's case will turn to something of that kind. As you are located where you can have access to the post-office let me ask of you that you write me frequently, advising me of the condition of things with my folks. It may so happen that they write, and have no chance to send the letter to the office.

Politics are running high here, some say Filmore is gaining ground, the old Democrat leaders say Buchannan is gaining, and that Filmore is not in the race, &c. From all I can learn, Fremont is gaining strength every day at the north. What the result will be I can't say. One thing I know, I shall vote for Mr. Filmore. I can't say to you yet when I can return home.

Yours truly, S. E. COLLINS.

Mobile, Oct. 2d, 1856.

DOCT. A. W. DESMUKE,

Dear sir: I received to day a letter from Mrs. Collins which gives me great apprehensions concerning the state of her mind and health, and particularly the latter; the main thing that determined me to move from Alabama to Western Texas, was in the hope that the climate and the association of my wife's family would tend to improve her health, but it seems from her letters, that she is growing continually weaker; I fear that it is the fact of my absence from her that has much to do in keeping her sick. I find that my business will require more of my time here than I had anticipated; this, taken into consideration with the ill health of Mrs. Collins, may make it necessary for me to move back to Mobile till things change with me in some way. My object in part, in addressing you, is to ask of you to see Mrs. Collins, and ascertain her wishes in the matter, also her capacity to stand a trip from New Orleans to this place. If you find that she is much troubled about my absence, let me know it. I know her temperament is such, that anything that gives her trouble is sure to cause her to be sick; uneasiness of mind will do her more harm than the climate can possibly do her good. I submit the matter to your sound judgment, and ask your advice what is best to do in the whole matter. As to matters here, there is no telling when they will materially change; they get on slowly. Let me hear from you soon, and oblige yours,

SIDNEY E. COLLINS.

The foregoing deposition by interrogatory and commission of the witness, Andrew W. Desmuke, was taken, subscribed and sworn to at the city of San Antonio, county of Bexar and State of Texas, on the twenty-fifth day of October, A. D. 1856, before W. B. Leigh, Esq., a Commissioner appointed to take testimony in said cause.

Deposition filed November 3, 1856.

GEO. E. HOLT, *Clerk*.

No. 3. *Interrogatories to be administered to William C. Abbott, of Liberty, Texas, a witness on the part of the complainant in said cause.*

1. Do you know the parties to this suit, or either, or any of them? If yea, which of them, and how long have you known them?

2. Did you at any time ever see Drury Thompson, one of the defendants, in Liberty? If yea, when, and who was in company with him?

3. Do you know of any deeds or papers executed by Sidney E. Collins to Drury Thompson at the time you speak of? If yea, what were they, and before whom were they executed and acknowledged?

4. Had you any conversation with Thompson while he was in Liberty in January, 1844, relating to the subject of said deeds, or did you learn from him his object in obtaining them, or what use he expected to make of them? If yea, state all that you heard from him, or in his presence on the subject.

5. Did Thompson speak of being sued, or of being annoyed by suits by Kennedy, or Kennedy's heirs? If yea, set forth all that he said on the subject fully and particularly.

6. Did you have any conversation with Thompson and Primrose together, on the subject of said deeds, or of said Kennedy suits? If yea, set forth the same, and state what appeared to be the connection between Thompson and Primrose in this matter.

7. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

K. B. SEWALL, *Sol. for Comp't.*

Filed 26 September, 1856. GEO. E. HOLT, *Clerk.*

Cross-interrogatories to Wm. C. Abbott, by the defendants in said cause.

1. Have you no retainer, fee or employment in said cause, direct or indirect, certain or contingent? Are you not a lawyer?

2. Have you read the bill or answers, or either of them, or any copy, abstract, or substance of them? Have you had no correspondence on the subject? If so, append full copies of any letters received or written about the same.

3. Have you given any advice in reference to this cause, or any part of it?

4. If you had any conversation with Thompson, such as is inquired about, please state how Thompson came to disclose to you anything about his objects, intentions or purposes. Had you known him before? Is Thompson a man who talks freely to strangers about his matters?

5. Can you pretend to remember with certainty any conversation you may have had, or heard from Thompson in 1844?

6. Was not any conversation Thompson had with you professional, and in the relation of client?

7. If you profess to give any conversation from Thompson or Primrose, please state when it was, in whose presence was it, what day of the week and month it was, where it was held, and what impressed it so on your mind as to enable you to remember it for twelve years?

8. Has not Collins for several months lately passed, been endeavoring to look up evidence for this case? Has he not consulted you about it, and has he not told you what he wished to prove?

Exceptions.

The defendants except to so much of the 6th interrogatory as asks, what appeared to be the connection between Thompson and Primrose, because it does not ask for facts, but for a conclusion of the witness; to 7th, because it is so general, that no opportunity is afforded defendants to cross-examine the witness in relation to any response he may be expected to make, or that he may make thereto.

Notified, that defendants required notice of the time and place of examining William C. Abbott.

CHANDLER, SMITH and HERNDON,
Sols. for defendants.

Filed 6 October, 1856. GEO. E. HOLT, *Clerk.*

No. 3. *Deposition of Wm. C. Abbott.*

Answers, on oath, of William C. Abbott, to the direct and cross-interrogatories in the within entitled suit.

1. To the first direct interrogatory he says, that he knows two of them, Sidney E. Collins and Drury Thompson. He became acquainted with Collins about the year 1840, and with Thompson, about 1844.

2. To the second, he says, he saw Drury Thompson in Liberty, about the month of January, 1844, a gentleman named Primrose, was with him.

3. To the third, he says, he saw two or three papers (he does not recollect which), executed by S. E. Collins and Louisa Collins, his wife, to Drury Thompson, at the time above spoken of. Witness thinks there was one or two deeds and a power of attorney; they were acknowledged before witness as Mayor of the town of Liberty.

4. To the fourth, he says, that he had conversations with Thompson while he was in Liberty in 1844, relating to the subject of said deed; he spoke of having law suits or difficulties with a man named Aiken, and one named Kennedy, or Kennedy's heirs. He spoke of obtaining these deeds to harass them in turn, or force them to a compromise.

5th. To the fifth he says: Thompson spoke of being sued by Kennedy, or Kennedy's heirs. He spoke of their being in possession of

the lands to which Collins gave him the deeds, and of suing for these lands or lots.

6. To the sixth he says: He has set forth all the conversation he recollects to have occurred with Messrs. Thompson and Primrose on said subjects. Witness does not know what connection there was between Thompson and Primrose; he never heard either of them say anything of any connection between them in that matter. Mr. Primrose was aiding him in procuring the deeds, and appeared to be acting as an attorney in the matter.

7. To the seventh he says: He knows nothing more, or that will be material. WM. C. ABBOTT.

1. To the first cross-interrogatory witness answers: That he has no retainer or employment in said cause, "direct or indirect, certain or contingent." Witness says that he is a lawyer.

2. To the second he says: That he has not read the bill, nor answers, nor either of them, nor any copy, abstract, nor the substance of them. Witness says he received a letter from S. E. Collins, some nine months or a year since, propounding questions to him, the letter being upon a subject in which witness felt no interest was lost or destroyed. The questions were as to the statements made by Thompson of the value of the property.

3. To the third he says: He has never given any advice in reference to this cause, nor any part of it, to any person.

4. To the fourth he says: He does not know whether Mr. Thompson disclosed to him, witness, his "objects, intentions or purposes." Witness did not know Mr. Thompson before. Witness does not know Mr. Thompson's habits of conversation before strangers.

5. To the fifth he says: That he cannot pretend to remember with certainty and accuracy any conversation he had with Mr. Thompson in 1844.

6. To the sixth he says: That it was not in the relation of client; that he, witness, was never retained by Mr. Thompson in any business whatever.

7. To the seventh he answers: That the principal conversation was while witness was riding with Messrs. Thompson and Primrose out to Collins' house, to take the acknowledgment of Collins' wife to the deeds above referred to. Collins lived about 2½ miles from Liberty, and witness rode out with Thompson and Primrose and back, and it was during the ride out and back and at Collins' house the conversation occurred. Witness does not recollect of any other persons present than Thompson, Primrose, Collins and Mrs. Collins. It was in January, 1844. Witness recollects this fact from having met Mr. Primrose in New Orleans about the month of June, 1844; it was the January before. Witness does not recollect the day of the week, nor the day of the month.

8. To the eighth he says: That Collins was here some time about the spring, and, witness believes, was looking up testimony. Mr.

Collins has not consulted witness in this case. He has told witness what he wished to prove, and questioned witness as to the facts he wished to prove. W. C. ABBOTT.

The foregoing deposition of William C. Abbott, taken, subscribed and sworn to, in the town of Liberty, Texas, on the 27th day of November, A. D. 1856, before William Chambers, Esq., a commissioner duly appointed to take testimony in said cause.

Filed 10th December, 1856. GEO. E. HOLT, *Clerk.*

No. 4. *Interrogatories to be administered to Henry B. Holcomb, of Mobile, Alabama, a witness on the part of the complainant in said cause.*

1. Were you connected with the management of the branch of the Bank of the State of Alabama at Mobile from 1844 to 1845, or any part of said time, and are you still connected with it, and in what capacity?

2. Was William F. Cleveland, during any of that time, indebted in any manner to said bank? If yea, in what amount, and when, and how was said indebtedness secured or settled? Set forth all that said bank ever received for said indebtedness; and, if it was in real estate, describe its location.

3. Was James Campbell, at any time from 1844 to 1845, indebted to said bank? If yea, in what amount, and how was it settled, and when?

4. Did said bank claim of James Campbell any back rents for any land derived from him or from Cleveland, accruing up to 1st November, 1843? If yea, state the amount of rents so claimed, and what steps or means were employed to obtain them. Set forth any and all notices given or received in regard to such back rents, and the dates.

5. Were such back rents ever paid to said bank? If yea, what amount, and when? If nay, why were they not paid? Set forth the reasons, if you know, or such, if any, as were assigned by James Campbell, or by Campbell & Cleveland, or by either of them.

K. B. SEWALL, *of Counsel for Compl't.*

Filed December 3d, 1856. GEO. E. HOLT, *Clerk.*

Cross-interrogatories to Henry B. Holcomb, by the Defendants in said cause.

1. Were not the transactions inquired about, by the interrogatories in chief, these? Were not Cleveland and Huggins indebted to the bank? Did not William F. Cleveland mortgage a large property for the payment of this indebtedness? Did he not afterwards convey his interest in certain real estate in Mobile, it being a part of that mortgaged to the bank, in payment of such indebtedness? Was not James Campbell joint owner with Cleveland of the estate conveyed by Cleveland? Did not the bank and Campbell partition the property? Was there not then a disagreement between Camp-

bell and the bank about the settlement of the rents? Did not the bank notify the tenants not to pay rents to Campbell, and did not this call from Campbell, or from Collins, the complainant, a counter notice not to pay rents to the bank? If this is not a correct statement, please give one. Specify the several matters in detail.

2. If James Campbell owed the bank anything, did he not pay it?

3. Please give a full narrative of all the matters before mentioned in these cross-interrogatories.

4. If you know anything else that will benefit the defendants, William F. Cleveland, Drury Thompson, and James Campbell, state it as fully as if you were specially interrogated about the same.

CHANDLER, SMITH, & HERNDON,
Sol'rs for Defendants.

Filed 13th December, 1856. GEO. E. HOLT, *Clerk.*

No. 4. *Deposition of Henry B. Holcomb.*

The said Henry B. Holcomb, in answer to said direct and cross-interrogatories, being duly sworn, says on oath:—

1. To the first interrogatory. He was cashier of said bank from the 24 May, 1843, to 1845, and after that time, and is still, connected with it as agent.

2. To second interrogatory. He finds from the books of the bank, that William F. Cleveland was indebted to the bank, as one of the firm of Cleveland & Huggins (the notes being signed Cleveland & Huggins, Jesse Turner, and H. Kinney), within the time mentioned in second interrogatory. There were three notes made by the parties above stated as follows:—

1st note, due 9–12 June, 1838,	$40,106 57	
Credited with,	8,125 00	
		$31,981 57
2d note, due 9–12 June, 1839,		64,817 37
3d " " 1840,		69,476 89
		$166,273 83
Interest added to settlement,		33,720 92
Protests,		5 25
Making in all at settlement,		$200,000 00

There was a mortgage executed by Cleveland & Huggins to the bank, dated 10 April, 1837, on a large amount of real estate to secure a debt of $174,398 83, but a final settlement appears to have been made by William F. Cleveland, under his proposition of 9 February, 1842, and accepted by the directors on the 18 March, 1842, by which the bank agreed to take the following real estate in full discharge of the debt—principal, interest, and a protest—amounting to $200,000 00, as stated in this answer.

No. 1. "An undivided half of one lot 100 feet square, situated on the corner of Water and St. Louis Streets, having a front of 100

feet on each of said streets, and bounded north and east by a twenty feet alley."

No. 2. "Also, an undivided half of lot of land, on the corner of Water and St. Anthony Streets, of 100 feet square, having a front on each of said streets of 100 feet, bounded east by Water Street, south by St. Anthony Street, north and west by property of Joshua Kennedy."

No. 3. "Also, undivided half of lot of land, bounded west by Water Street, south by St. Anthony Street, east by Commerce Street, and north by line parallel with St. Anthony Street, and 100 feet distant therefrom, adjoining the property on the north of Joshua Kennedy, having a front on Water Street of 100 feet, and on Commerce Street of 100 feet, and a front on St. Anthony Street of 240 feet, more or less."

No. 4. "Also, one undivided half of lot of land between Commerce and Front Streets, having a front of 100 feet on each of said streets, also a front on St. Michael Street of 80 feet; bounded east by Front Street, south by St. Michael Street, and north by a line parallel with St. Michael Street, adjoining Kennedy's property."

No. 5. "Also, undivided half of land on which is situated a wharf known as 'Indian Wharf,' bounded west by Front Street, south by St. Anthony Street, east by the channel of Mobile River, and north by a line parallel with St. Anthony Street, and distant therefrom 100 feet."

In addition to the sum of two hundred thousand dollars allowed for the above property by the bank, the bank paid for the property as follows:—

To Wm. R. Hallitt, executor, for the assignment of a mortgage from James Campbell and Wm. F. Cleveland to Joshua Kennedy,	$7,524 90
To me, J. McRae, master in chancery, on 7 Dec. 1840,	10,550 00
Add the amount above,	200,000 00
Making the whole sum allowed for the property above described,	$218,074 90

The above five lots were held jointly by the bank and James Campbell, until some time in 1844, when a division was made, by which the bank obtained the conveyance of James Campbell to his half of lots No. 1, No. 2, and No. 3—thus becoming the owner in entirety of these lots—and the bank conveyed to James Campbell its undivided half of lots No. 4 and No. 5. The bank finally sold the lots No. 1, No. 2, and No. 3, as follows:—

No. 1 sold for	$10,600 00
" 2 "	6,525 00
" 3 "	4,000 00
	$21,125 00
And received from James Campbell for choice in division,	250 00
	$21,375 00

Making the whole amount received for the debt of Cleveland & Huggins, twenty-one thousand three hundred and seventy-five dollars.

3. To the third interrogatory. James Campbell was indebted to the bank by note, as follows:—

James Campbell, Cleveland & Huggins, H. Kinney, D. & J. B. Walker, Sloo & Byrne. Note due 26 January, 1339, $16,452 63.

Various payments were made on the debt, which reduced it to $8,113 25, when he executed a mortgage on real estate to secure it, dated March 6, 1847, one-half of this balance payable on the 1st March, 1848, and the other half on the first of March, 1849. The payments were all made at the following dates—that is to say, the payments on the original note.

On 2d January, 1841,	$3,319 63
" 7th " "	4,418 59
" 14th March, 1845,	2,000 00
" 20th " "	2,721 84
" 30th May, "	92 48
" 6th March, 1848,	1,900 09
" 5th " 1849,	2,000 00
	$16,452 63

The final balance on the debt was paid on the *3d of March*, 1849, and entered on the *5th of March*, 1849, and the mortgage was cancelled.

4. To fourth interrogatory. The bank did claim of James Campbell its proportion of rents received for the joint property of the bank and himself. It appeared that Mr. Campbell had rented the property from the time the bank became a joint owner. The Board of Directors passed a resolution on the 19 January, 1844, requiring the Cashier to request Mr. Campbell to submit a statement of rents received up to 1st November, 1843. Another resolution was passed by the Board of Directors, requiring the Cashier to notify the tenants not to pay over the rents to James Campbell. The notices were given accordingly to the following persons, who were understood to have rented the property: To Bull & Boardman, Wilson & Dobson, Boykin & McRae, Smith & Dabney, Robert E. Redwood, John Osborne, Thomas Wilson, George Torrent, Thompson & Gallup, and Goodman and Fettyplace. These notices were served by J. S. Marsh, then bank marshal, on the 3d of February, 1844. Witness has no recollection that any statement of the rents was ever made to the bank, nor does he recollect that the bank ever ascertained the amount of rents due to it. Witness has some recollection about a notice which was served on James Campbell soon after that time, at the instance of a Mr. Collins, not to pay over rents to the bank.

5. To the fifth interrogatory, witness has no recollection that the bank ever received payment from Mr. Campbell for its portion of the rents. The impression on the mind of witness is, that it was

stated at the time that the repairs on the property had been considerable, and had been paid by Mr. Campbell. Witness has no distinct recollection why it was that the bank did not prosecute its claim for rents against Mr. Campbell, unless it was caused by the counter notice said to have been served on Mr. Campbell, not to pay over to the bank, and the suit of Collins *vs.* Kennedy's Heirs, &c. Witness does not find any entry on the books showing any payment by Mr. Campbell for the rents, and he infers from this, that there must have been some cause for the banks abandoning its claim, but has no recollection of what it was, further than as above stated.

Answers to Cross-Inty's.

1. To first cross-interrogatory. They were indebted to the bank, as stated in the answer of witness to second direct interrogatory. Cleveland and Huggins mortgaged a large amount of real estate to the Branch Bank at Mobile, to secure the indebtedness. William F. Cleveland did convey certain real estate to the bank in full discharge of his, Cleveland & Huggins' debt, the same being a portion of the mortgaged property. James Campbell was joint owner with Cleveland & Huggins in the real estate conveyed by Cleveland to the bank. The bank and Campbell, finally, in 1844, divided the property as stated in the answer of witness to the second direct interrogatory. There was a difficulty about the settlement of the rents during the time the bank and James Campbell held the property jointly, Mr. Campbell having collected the rents as stated in the answer of the witness to the fourth direct interrogatory. Notice was given to the tenants not to pay rents to Mr. Campbell, as stated in the answer to fourth direct interrogatory, and witness understood and believes that a counter notice was served on James Campbell not to pay over the rents to the bank. The statement made in this interrogatory is substantially correct, and the matters alluded to are specified in the answers of witness to the direct interrogatories.

2. To second cross-interrogatory. The debts of James Campbell to the bank have been paid in manner as stated by the witness in the answer to third direct interrogatory.

3. To the third cross-interrogatory. Witness has given as full a narrative, as it is in his power to give from his own knowledge and from the records of the bank in his answers to the direct interrogatories to which he refers.

4. To fourth cross-interrogatory. Witness knows nothing more of the matters alluded to.

HENRY B. HOLCOMBE.

The foregoing deposition of Henry B. Holcombe, taken, subscribed, and sworn to, at the city of Mobile, on the 27th day of December, A. D. 1856, before F. S. Blount, Esq'r, a commissioner duly appointed to take testimony in said cause.

Filed, March 13th, 1857. GEO. E. HOLT, *Clerk.*

Nos. 5 and 6. *Interrogatories to be administered to Joseph J. T. Wilson and John M. Taylor, both Witnesses on behalf of the Complainant in the above entitled cause.*

1. Do you know Daniel Chandler, James H. Campbell, John A. Campbell, William D. Primrose, and the above named defendants, Thompson, Cleveland, and Campbell? Have you seen them write? Do you know their handwriting, or the handwriting of any, and which of them?

2. Look upon the deeds and writings produced and shown to you at the time of your examination, copies of which, marked respectively, Exhibits A, B, C, D, E, and H, are exhibits to complainant's bill. Examine each of said deeds and writings so shown to you, and every part of each of them, and the signatures thereto, and the acknowledgments, if any, thereon; and state, if you know, in whose proper handwriting each of said deeds and writings is, as well as the signatures thereto, and the acknowledgments thereon; and if any part of any of said deeds and writings, or either of them, are in different handwritings, specify what part, and the handwriting of each.

3. State whether the deeds and writings, so shown to you, are originals. Please to compare them with the aforesaid exhibits to the bill, and state whether the said exhibits are true copies of the originals shown to you. If there is any variance, state what it is, and annex to your answers the original of Exhibits B, C, E, and H, so marked and shown to you.

4. Examine particularly the exhibit to the bill marked A, and the originals of such exhibit shown to you at the time of your examination. Examine each of said parts, originals, and every part of each of them, and state how many of such originals are shown to you, and in whose proper handwriting each of them is, and every part of each of them is, and whether each one of said originals contains a covenant for relinquishment of dower; and whether the body of such deeds and such covenants, if any, is in the same handwriting, or in different handwritings, and in whose; and in whose handwriting the acknowledgment on each of said deeds is; and whether or not there are any erasures on said deeds, or any of them, and what, if any, there are, and where the covenant for relinquishment of dower on each is, and annex true copies of each of said deeds, if there is any variance between them, whether in form or arrangement, and state which of said deeds, or how many of them, are recorded.

5. Look upon such other deeds or writings as are shown to you upon your examination upon this interrogatory, and state, if you know in whose handwriting each of them is, and whether they are originals; annex to your answers those marked respectively P and Q, and state in whose handwriting the same, and the signatures to each of them is, and annex true copies of the other deeds so shown

to you, and state in whose proper handwriting the originals of such copy, so annexed, is.

6. What relationship exists between James H. Campbell, Douglas Campbell, and James Campbell? What is the profession of James H. Campbell? Does he occupy an office by himself, or, with another, and whom? And how long has such occupation continued?

K. B. SEWALL, *of Counsel for Compl't.*

Filed, March 27th, 1857. GEO. E. HOLT, *Clerk.*

No. 5. *Deposition of Joseph J. T. Wilson.*

The said witness, in answer to the foregoing interrogatories, on oath says:—

1. I know Daniel Chandler, William D. Primrose, Drury Thompson and Wm. F. Cleveland, personally. James H. Campbell I also know personally. John A. Campbell and James Campbell, one of the defendants, I only know by sight. I have seen Wm. F. Cleveland write his name some half a dozen times. I have seen Daniel Chandler write frequently and am well acquainted with his handwriting. I am not acquainted with the writing of Wm. D. Primrose. I have seen Drury Thompson write, and I have seen a great deal of his handwriting, but cannot say that I know it. I do not know that I have seen John A. Campbell write, but have seen a great deal of his writing. I have seen James H. Campbell write, and know his handwriting. I have only seen James Campbell write his name.

2. I have before me two papers, duplicates, of which Exhibit (A), attached to the bill, purports to be a copy, all of said document which purports to be deeds from Sidney E. Collins to the defendants herein are, up to the words "the 15th of February, A. D. 1851," in the handwriting of James H. Campbell, the balance down to the signature of Sidney E. Collins, that is to say, the proviso for relinquishment of dower, is in the writing, I believe, of Drury Thompson; the following portion, which seems to be the acceptance or agreement of D. Thompson, Wm. F. Cleveland, and James Campbell, and which is signed by them, is also in the handwriting of James H. Campbell, with the exception of the words "executed in triplicate," which I believe are in the handwriting of Drury Thompson. I do not know the signature of Collins. The signatures of Drury Thompson, Wm. F. Cleveland and James Campbell, I am satisfied are their genuine and proper handwriting. The acknowledgments to both are in the handwriting of Wm. Brooks, and the signature to the same is his. I have before me an original letter, of which Exhibit B to the bill is a copy, and which is attached to my answer, as Exhibit (No. 1). I am not very familiar with the handwriting of Drury Thompson, but my belief is, that all of said letter, Exhibit (No. 1), is in the handwriting of Drury Thompson, and that the signature thereto is his. I have before me an original letter, of which Exhibit C to the bill is a copy, and which is attached to my answer as (Exhibit No. 2). I do not know, of my own knowledge, in whose handwriting it is.

The original of Exhibit D to the bill has not been submitted to me. I have before me a paper purporting to be a power of attorney from Sidney E. Collins to James Campbell and Wm. F. Cleveland, dated the 16th day of July, A. D. 1851, and of which Exhibit E to the bill purports to be a copy (and which is attached to my answer as Exhibit No. 3). I do not know in whose handwriting the body of the instrument is, nor do I know the signature; the acknowledgment and signature thereto is in the handwriting of William Brooks. I have exhibited to me what appears to be an unexecuted instrument, of which Exhibit H to the bill purports to be a copy (and which is attached as Exhibit No. 4 to my answer), the whole of said paper is in the handwriting of James H. Campbell.

3. I presume that the papers submitted to me are originals. I have carefully compared the original instrument submitted to me, and of which Exhibit A purports to be a copy. I mean the *duplicate* deeds of Sidney E. Collins to the defendants, of which two parts only have been submitted to me. The said Exhibit A to the bill is a true copy of the original submitted to me with the exception of the word "*District*," in the copy omitted after the word "*Southern*," on the 4th line, and also the omission of the word "of" in the 2d page, 20th line, between the words "thirds" and "the." I have carefully compared the copy, marked Exhibit B, to the bill with the original annexed to my answer as Exhibit No. 1; it is a true and correct copy of the same. I have carefully compared the copy marked *Exhibit C* to the bill with the original annexed to my answer, marked No. 2, and I find it to be a true copy of the same. I have carefully compared the copy marked Exhibit E to the bill with the original annexed to my answer, as Exhibit No. 3, and find it, with immaterial omissions, to be a true copy. I have carefully compared the copy marked Exhibit H, to the original annexed to my answer as Exhibit No. 4, and find it to be a true copy of the same.

4. I have stated fully heretofore as to every part of each of the two original parts of Exhibit A to the bill, as to the handwriting thereof, in my answer to interrogatory No. 2. I have also stated, in my answer to interrogatory No. 3, that the copy of the same marked Exhibit A to the bill is a true copy, with two exceptions, which are both noted. Only two of said original parts have been shown to me; they both contain a covenant for relinquishment of dower, which is at the end of the document signed by S. E. Collins, and is immediately above his signature in both. There are no erasures in either of them, and they are counterparts. My description of the different handwriting, and of the signatures to the different parts, and of their relative positions, will answer for both. The acknowledgment of Wm. Brooks is last, and is at the bottom of the third page. Only one of the two parts exhibited to me is recorded; they are almost *fac-similes*.

5. I have before me a paper purporting to be the original contract between Sidney E. Collins and W. O. Pond and J. P. Pond, and which is annexed to my answer as Exhibit No. 5. I do not know in whose

writing the body of the instrument is. The signature "by Wm. F. Cleveland" is in the handwriting of Wm. F. Cleveland; the other signatures I do not know. I have shown to me a paper, which is annexed to my answer as Exhibit No. 6. I do not recognize the handwriting of the body of said instrument or document; the words of the signature "by Wm. F. Cleveland" are in the writing of William F. Cleveland; the other signatures I do not recognize. I have exhibited to me an original deed from Collins and wife to Dorrance & Sons, for property on the northwest corner of St. Louis and Water Streets in Mobile, dated 16th day of June, A. D. 1852, and of which a copy is annexed to my answer, marked Exhibit No. 7. Said deed is in the handwriting of James H. Campbell; the acknowledgment is in the writing of George Conway. The signatures of James Campbell, Drury Thompson, and Wm. F. Cleveland to the relinquishment are genuine. I have exhibited to me an original deed from S. E. Collins and wife to Thomas T. Bolling, for property in the city of Mobile, on the southeast corner of Water and St. Anthony Streets, dated the 11th day of April, 1853, and of which a copy, marked Exhibit No. 8, is annexed to my answer. I do not know in whose handwriting the said deed is written. The whole is written by the same person, and I think by Drury Thompson. The signatures of Wm. F. Cleveland, James Campbell, and Drury Thompson are genuine.

6. James H. Campbell and Douglas Campbell are the sons of James Campbell. James H. Campbell is a lawyer. I do not know how he occupied an office, nor how long. J. J. T. WILSON.

The foregoing deposition of Joseph J. T. Wilson was taken, subscribed, and sworn to at the city of Mobile, on the 10th day of April, 1857, before Alphonse Hurtel, Esq., a commissioner appointed to take testimony in the said cause.

No. 6. *Deposition of John M. Taylor.*

The said witness, in answer to the aforesaid interrogatories, on oath says: I have submitted to my inspection two counterparts of an original instrument of writing made by Sidney E. Collins on the fifteenth of February, 1851, with an agreement signed by the defendants in this suit, and an acknowledgment by Wm. Brooks, of which *Exhibit A* to the bill purports to be a copy, that said document from the beginning up to the words "15th of February, 1851," inclusive, are in the handwriting of James H. Campbell. What follows, to wit, the covenant for relinquishment of dower, down to the signature of "S. E. Collins," is in the handwriting of Drury Thompson. The agreement that follows the signature of Collins, with the exception of the words "executed in triplicate," and which is signed by the defendants, is in the handwriting of James H. Campbell. The acknowledgment is in the handwriting of William Brooks. The signatures of Campbell, Thompson, Cleveland, and Brooks are genuine. I also believe the signature of Collins to be his. I have before me an original letter, of which Exhibit B to the bill purports to be a copy,

and which is attached to my answer as Exhibit No. 1. It is all in the handwriting of Drury Thompson. I have before me an original letter of John A. Campbell's, dated Mobile, 16 July, A. D. 1851, of which Exhibit C to the bill purports to be a copy, and which is attached to my answer as Exhibit No. 2. It is all in the handwriting of John A. Campbell. I have exhibited to me a power of attorney from Sidney E. Collins to James Campbell and Wm. F. Cleveland, dated the 16 of July, 1851, of which Exhibit E to the bill purports to be a copy, and which is attached to my answer as Exhibit No. 3. It is the handwriting of W. D. Primrose. The acknowledgment and signature thereto is in the handwriting of Wm. Brooks. The original of Exhibit D has not been submitted to my inspection. The unexecuted instrument of which Exhibit H to the bill purports to be a copy, and which is annexed to my answer as Exhibit No. 4, is the handwriting of James H. Campbell. I have submitted to me an original contract, of which Exhibit P to the bill purports to be a copy, and which is annexed to my answer as Exhibit No. 5. The body thereof is in the handwriting of Wm. D. Primrose. The signature of Wm. F. Cleveland I know to be his, and I believe the signatures of W. O. Pond and J. P. Pond to be genuine. I have submitted to me an original contract between Collins and Cleveland, and Kirkbride and Ellis, dated the 22d of May, A. D. 1852, of which Exhibit Q to the bill purports to be a copy, and which is annexed as Exhibit No. 6 to my answer. The body of said instrument is in the handwriting of Wm. D. Primrose. I am not positive that the signature "Collins & Cleveland, by Wm. F. Cleveland," was made by Wm. F. Cleveland. I do not know the other signature, nor do I recognize the handwriting of the *addendum* and letter attached to Collins, Cleveland & Co. I have before me a deed from Sidney E. Collins and wife to Dorrance & Sons, bearing date the 16th day of June, 1852, for property on the northwest corner of St. Louis and Water Streets, and of which a copy, marked Exhibit No. 7, is attached to my answer. The whole of said instrument, with the exception of the signatures, the acknowledgment, and the interlineation noted at the bottom of the said instrument, are in the handwriting of James H. Campbell. I recognize and know the signatures of Sidney E. Collins, Wm. F. Cleveland, James Campbell, and Drury Thompson to be genuine. The interlineation, the noting thereof at the bottom of said instrument, and the acknowledgment and signature thereto, are in the writing of George Conway. I recognize the handwriting of James H. Campbell in the body of three of the notes attached to said deed, each for $2,000, and due respectively on the first of May, 1854, 1855, and 1856. I do not know the signatures to any of said notes. I have submitted to me a deed from Collins and wife to Thomas T. Bolling, dated the 11th of April, 1853, for property in the city of Mobile, on the southeast corner of Water and St. Anthony Streets, and of which Exhibit 8 attached to my answer is a copy. The body of the deed, the confirmation, and the acknowledgment thereof, that is to say,

all of said instrument except the signatures thereto, is in the handwriting of Drury Thompson. The only signatures that I recognize are those of Wm. F. Cleveland, James Campbell, and Drury Thompson.

3. I believe they are originals; the copies attached to the bill marked Exhibits A, B, C, E, H, P and Q, are upon examination considered to be true copies with one or two immaterial variations and incident to copying.

4. I have before me only two originals of Exhibit A to the bill; one of them is recorded and the other not, and for the purpose of certainty, I shall distinguish them by designating the recorded part of said original as No. 1 and the other as No. 2; the body of No. 1, from the beginning up to the words "15th of February, A. D. 1851," is in the handwriting of James H. Campbell, and the remainder, which is a covenant to obtain relinquishment of dower, is in the handwriting of Drury Thompson; then comes the signature of Sidney E. Collins, which I do not recognize. (I would here remark that when the name "Sidney," as the signature of Sidney E. Collins is written out in full, I do not recognize the signature; but when said name is abbreviated I do.) This will account for my testifying to his signature in some of the papers submitted to me in this examination as being genuine. The agreement that follows, and which is signed by the defendants in this case, is in the handwriting of James H. Campbell, with the exception of the words "*executed in triplicate*," which are in the handwriting of Drury Thompson. The acknowledgment and the signature thereto are in the handwriting of Wm. Brooks. There are no erasures in No. 1; there is an interlineation of the word "of" in the 3d line from the bottom of 1st page, and said interlineation is in the handwriting of James Campbell; the word "of" is interlined between the words "and" and "the," which immediately precede the words *the words "costs and charges."* The word "of" here, as aforesaid interlined, is not in the copy marked Exhibit A to the bill. What I have said of No. 1, with regard to each and every part, erasures and the interlineations can apply to, and is my testimony as to 2, with these exceptions: No. 2 is not recorded; the last four letters of the word "heretofore," on the 12th line of first page, and the word "money," in the 13th line of 1st page are interlined in the handwriting of James H. Campbell. In the agreement signed by the defendants, the word "said" is interlined between "their" and "interests," in the handwriting of James H. Campbell. In the acknowledgment, the word "said" is erased in the 5th line thereof, between the words "for" and "county," and the word "the" interlined in its stead, in the handwriting of Wm. Brooks.

5. I have before me a deed from Collins and wife to R. W. Smith, for property in Mobile City, next north of the corner of St. Louis and Water, on the west side of Water, dated the 1st of March, A. D. 1853, and of which a copy marked (No. 9 Exhibit) is attached to my answer; said deed is in the handwriting of Drury Thompson. As

to Exhibits P and Q to the bill, see my answer to interrogatory No. 2.

5. James H. Campbell and Douglas Campbell are brothers, and they are sons of James Campbell. James H. Campbell is an attorney-at-law. As to the remainder of this interrogatory, I know nothing.

As an addendum to my answer to No. 5, I would state that I have now exhibited to me a deed of mortgage from Thomas T. Bolling to Sidney E. Collins, dated the 11th April, A. D. 1853, and of which Exhibit 10, attached to my answer, is a copy. Said original deed is a printed form like that of the copy. The writing is in the hand of Drury Thompson. I do not know the signature or handwriting of Mordecai Thompson. JNO. M. TAYLOR.

The foregoing deposition of John M. Taylor was taken, subscribed and sworn to at the city of Mobile, before Alphonse Hurtel, Esq., a commissioner appointed to take testimony in said cause, the same being commenced on the 10th, and completed on the 11th day of April, 1857.

Exhibits to the testimony of Joseph J. T. Wilson and John M. Taylor, and referred to therein, to wit:—

Exhibit A to Bill.

Original deed executed in triplicate by Sidney E. Collins to Wm. F. Cleveland, James Campbell and Drury Thompson, dated 15th February, 1851, one part of which is endorsed on the back thereof as follows: "Received in office for record 16th December, 1853, and recorded in book, *and recorded in book* No. 6, N. S. on pages 370 and 371. (See page 82.) E. RUST, *Judge.*"

No. 1. *Exhibit B to Bill.*

Original letter from Drury Thompson to Sidney E. Collins, without date, and copy of decree in case of S. E. Collins *vs.* Kennedy's Executors and Heirs attached. (See page 86.)

No. 2. *Exhibit C to Bill.*

Original letter from John A. Campbell to Sidney E. Collins, Drury Thompson, Wm. D. Primrose, James Campbell and Wm. F. Cleveland, on the subject of his fee, the alley-ways, etc., and dated Mobile, 16 July, 1851. (See page 93.)

No. 3. *Exhibit E to the Bill.*

Original power of Attorney from Sidney E. Collins to James Campbell and William F. Cleveland, dated 16 July, 1851. (See page 100.)

No. 4. *Exhibit H to Bill.*

Original indemnity to Sidney E. Collins from the defendants, without signature, and dated the day of June, A. D. 1852. (See page 106.)

No. 5. *Exhibit P.*

Original building contract executed to W. O. and J. P. Pond, dated 10th March, 1852, by S. E. Collins and Wm. F. Cleveland, etc. (See page 1488, Pond's deposition.)

No. 6. *Exhibit Q.*

Original building contract executed to Ellis and Kirkbride, dated 10th March, 1852, by Wm. F. Cleveland and S. E. Collins, etc. (See page 1498, Kirkbride's deposition.)

The foregoing exhibits have already been transcribed in the record as exhibits to the bill and to the answers of the defendants (see the references to same), and the exhibits P and Q are also referred to and copied as exhibits to the depositions of J. P. Pond and Jonathan Kirkbride. *Clerk.*

No. 7. *Exhibit No.* 7.

Deed from S. E. Collins and Wife to C. W. Dorrance and Sons.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents that we, Sidney E. Collins and Louisa, his wife, parties of the first part, for and in consideration of the sum of ten thousand dollars, to us in hand paid by Charles W. Dorrance, Gideon M. Parker, and Robert C. Macy, co-partners under the name and style of Dorrance and Sons, in the city of Mobile, parties of the second part, do sell, and by these presents have sold and conveyed unto the said parties of the second part, as co-partners aforesaid, their heirs and assigns, all that lot or parcel of land lying and being in the city of Mobile, in the State of aforesaid, bounded and described as follows, to wit: On the north-west corner of Water and St. Louis Streets, on the south by St. Louis Street, on the east by Water Street, and on the west and north by lands belonging to the said Sidney E. Collins and others; having a front of one hundred and ten feet on St. Louis Street, with an equal and parallel side on the north, and fifty feet front on Water Street with an equal and parallel side on the west. To have and to hold the above granted and bargained premises with the appurtenances thereof, unto the said parties of the second part, their heirs and assigns forever. And we do by these presents bind ourselves and our heirs to warrant and forever defend the above granted and bargained premises unto the said parties of the second part, their heirs and assigns, against all claims and demands whatsoever, and we do further covenant that full and sufficient payment of *of* taxes now due upon said property shall be by us well and truly made. Signed and sealed this 16th day of June, in the year of our Lord one thousand eight hundred and fifty-two.

SIDNEY E. COLLINS, [SEAL.]
LOUISA R. COLLINS, [SEAL.]

Know all men by these presents that we, William F. Cleveland, James Campbell, and Mary, his wife, and Drury Thompson, in consideration of ten dollars to us in hand paid, do hereby ratify and confirm unto the said Charles W. Dorrance, Gideon M. Parker, and Robert C. Macy, all the estate and interest to them conveyed by Sidney E. Collins and Louisa R., his wife, in the above written deed, and we do hereby bind our heirs and assigns to ratify and confirm unto the said parties, their heirs, and assigns, the aforementioned conveyed interest and estate. Signed and sealed this sixteenth day of June, in the year of our Lord one thousand eight hundred and fifty-two.

The word Louisa R. interlined before signing and sealing.

W. F. CLEVELAND, [SEAL.]
JAMES CAMPBELL, [SEAL.]
MARY C. CAMPBELL, [SEAL.]
[SEAL.]
DRURY THOMPSON, [SEAL.]

THE STATE OF ALABAMA,
Mobile County, ss.

Before me, George Conway, a Notary Public in and for Mobile County, State aforesaid, personally appeared Sidney E. Collins and Louisa R., his wife, who acknowledged each, that they signed, sealed, and delivered the within instrument of writing to Charles W. Dorrance, Gideon M. Parker, and Robert C. Macy, co-partners under the name of Dorrance and Sons, on the day and year, and for the uses and purposes therein mentioned, and the said Louisa R. being by me separate and apart from her said husband, then and there declared that she freely and voluntarily renounced all right and title to dower to the within described real estate.

In witness whereof I have hereto set my hand and seal official at Mobile, the 30th day of June, 1852.

[L. S.] GEORGE CONWAY, *Notary Public.*

Recorded book No. 6, N. S., page 16, 17.

No. 8. *Exhibit No.* 8.

Deed from Sidney E. Collins and Wife to Thomas T. Bolling.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents that we, Sidney E. Collins and Louisa R., his wife, for and in consideration of fifteen thousand dollars to us in hand paid by Thomas T. Bolling, of the city of Mobile, party of the second part, do sell, and by these presents have sold and conveyed unto the said party of the part, all that lot and parcel of land, lying and being in the city of Mobile, in the county and State aforesaid, situated on the southeast corner of Water and St. Anthony Streets, bounded as follows, to wit: On

the west by Water Street on which it fronts 115 feet, on the north by St. Anthony Street on which it fronts one hundred feet, on the east by an alley way on which it fronts one hundred and fifteen feet. To have and to hold the above granted and bargained premises with the appurtenances thereof, unto the said party of the second part, his heirs and assigns forever. And we do by these presents bind ourselves and our heirs to warrant and forever defend the above granted and bargained premises unto the said party of the second part, his heirs and assigns, against any and all persons lawfully claiming the same. In witness whereof we have hereto affixed our hand and seals this the 11th day of April, in the year one thousand eight hundred and fifty-three.

SIDNEY E. COLLINS, [SEAL.]
LOUISA. R COLLINS, [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

I, Mordecai Thompson, a notary for the county of Mobile, State aforesaid, hereby certify that Sidney E. Collins and Louisa R., his wife, whose names are signed to the foregoing conveyance, and who are both known to me, acknowledged each of them on this day (the said Louisa R. being examined separately and apart from her said husband), that being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal notarial this the 11th day of April, in the year eighteen hundred and fifty-three.

[SEAL.] MORDECAI THOMPSON,
Notary Public.

STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that we, William F. Cleveland, James Campbell, and Mary C. his wife, and Drury Thompson, in consideration of ten dollars to us in hand paid, do hereby ratify and confirm unto the said Thomas T. Bolling all the estate and interest to him conveyed by Sidney E. Collins and Louisa R. his wife, in the above written deed, and we do hereby bind our heirs and assigns to ratify and confirm unto the said parties, their heirs and assigns, the aforementioned conveyed interest and estate. Signed and sealed this nineteenth day of April, A. D. 1853.

W. F. CLEVELAND, [SEAL.]
JAMES CAMPBELL, [SEAL.]
MARY C. CAMPBELL, [SEAL.]
DRURY THOMPSON. [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

I, Mordecai Thompson, a Notary Public in and for the County of Mobile, State of Alabama, hereby certify that William F. Cleveland,

James Campbell, and Mary C. his wife, and Drury Thompson, whose names are signed to the foregoing conveyance and confirmation on the second page of this sheet, each of them on this day (the said Mary C. being examined separately and apart from her said husband James Campbell), that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal notarial, this the 19th day of April, in the year eighteen hundred and fifty-three.

[SEAL.] MORDECAI THOMPSON, *Notary Public.*

Exhibit No. 9. Deed, Collins and wife to R. W. Smith.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that we, Sidney E. Collins and Louisa his wife, parties of the first part, for and in consideration of the sum of nine thousand dollars to us in hand paid by Robert W. Smith, of the city of Mobile, of the second part, do sell, and by these presents have sold and conveyed unto the said Robert W. Smith, his heirs and assigns, all that lot and parcel of land lying and being in the city of Mobile, in the county and state aforesaid, bounded and described as follows, to wit: On the east by Water Street, on which it fronts, fifty feet; on the south by a lot heretofore conveyed to Dorrance and sons; on the west by lands of Sidney E. Collins and others, and on the north by an alley on which it fronts one hundred and ten feet, the said lot fronting fifty feet as aforesaid on Water Street, and extending back with the same width in the rear as front one hundred and ten feet.

To have and to hold the above granted and bargained premises with the appurtenances thereof unto the said party of the second part, his heirs and assigns forever. And we do by these presents bind ourselves and our heirs to warrant and forever defend the above granted and bargained premises unto the said party of the second part, his heirs and assigns, against all claims and demands whatsoever of any person or persons lawfully claiming the same.

In witness whereof, we have hereto affixed our hands and seals the first day of March, A. D. 1853.

SIDNEY E. COLLINS, [SEAL.]
LOUISA R. COLLINS, [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

I, Mordecai Thompson, Notary Public in and for the county of Mobile, State of Alabama, duly commissioned and sworn, hereby certify that Sidney E. Collins and Louisa R. Collins his wife, whose names are signed to the foregoing conveyance, and who are both known to me, acknowledged each of them before me on this day, that, being informed of the contents of the conveyance, they executed

the same voluntarily on the same day the same bears date, and the said Louisa R. Collins being by me examined separate and apart from her said husband, then and there declared that she freely and voluntarily renounced all right and title to dower in the within described real estate.

Given under my hand and seal of office, this the fourth day of March, in the year of our Lord one thousand eight hundred and fifty-three. [SEAL.] MORDECAI THOMPSON,
Notary Public.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that we, William F. Cleveland, James Campbell and Mary his wife, and Drury Thompson, all of the city of Mobile, in consideration of ten dollars to me in hand paid, do hereby ratify and confirm unto the said Robert W. Smith all the estate and interest to him conveyed by Sidney E. Collins and Louisa R. his wife, in the above written deed, and we do hereby bind our heirs and assigns to ratify and confirm unto the said Robert W. Smith, his heirs and assigns, the aforementioned conveyed interest and estate.

Signed and sealed, this the first day of March, in the year of our Lord one thousand eight hundred and fifty-three.

W. F. CLEVELAND, [SEAL.]
JAMES CAMPBELL, [SEAL.]
MARY CAMPBELL, [SEAL.]
DRURY THOMPSON, [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

I, Mordecai Thompson, a Notary Public in and for the county of Mobile and State of Alabama, duly commissioned and sworn, hereby certify that William F. Cleveland, James Campbell and Mary C. Campbell his wife, and Drury Thompson, whose names are signed to the foregoing conveyance, and who are severally known to me, acknowledge before me on this day that being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and the seal of my office, this the first day of March, in the year of our Lord one thousand eight hundred and fifty-three. [L. S.] MORDECAI THOMPSON,
Notary Public.

Endorsed, " Recorded in book of deeds No. 5, N. S. page 414."

Exhibit No. 10.

Mortgage Deed from Thomas T. Bolling to Sidney E. Collins.

THE SATE OF ALABAMA.
Mobile County.

Know all men by these presents, that I, Thomas T. Bolling of said

County and State, in consideration of the sum of thirteen thousand two hundred dollars to me in hand paid by Sidney E. Collins, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, convey, and confirm unto the said Sidney E. Collins, his heirs and assigns forever, all that lot and parcel of land lying and being in the city of Mobile, county of Mobile, State aforesaid, situated on the southeast corner of Water and St. Anthony Streets, bounded as follows, to wit: On the west by Water Street, on which it fronts one hundred and fifteen feet; on the north by St. Anthony Street, on which it fronts one hundred feet; on the east by an alley-way, on which it fronts one hundred feet; being the same property conveyed by the said Sidney E. Collins and Louisa R. his wife, by deed bearing date the 11th day of April, 1853, to the said Thomas T. Bolling. Together with all and singular the tenements, hereditaments, rights, members, privileges and appurtenances, unto the above mentioned and described premises belonging, or in any wise appertaining. To have and to hold the above granted and described premises with the appurtenances unto the said Sidney E. Collins, and to his heirs and assigns, and to their sole and only proper use, benefit and behoof forever. Provided always, and these presents are upon this express condition, that if the said Thomas T. Bolling, his executors, administrators and assigns, shall well and truly pay to the said Sidney E. Collins, and to his ex'ors, adm'rs, or assigns, the sum of thirteen thousand two hundred dollars due by five certain promissory notes, signed by the said Thomas T. Bolling, dated Mobile, April 11th, 1853, payable to the order of Sidney E. Collins, negotiable and payable at the Bank of Mobile, one for eight hundred dollars due 1st April, 1854, one for eight hundred dollars due 1st April, 1855, one for eight hundred dollars due 1st April, 1856, one for eight hundred dollars due 1st of April, 1857, then these presents shall cease, determine, and be void, otherwise to be and remain in full force.

Given under my hand and seal this eleventh day of April, in the year of our Lord one thousand eight hundred and fifty-three.

THOMAS T. BOLLING. [SEAL.]

Signed, sealed and delivered in presence of

THE STATE OF ALABAMA,
Mobile County.

I, Mordecai Thompson, Notary Public in and for the County of Mobile, hereby certify that Thomas T. Bolling, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the said conveyance, he executed the same voluntarily on the day it bears date.

Given under my hand and seal notarial this the twenty-ninth day of April, 1853.

[SEAL.] MORDECAI THOMPSON, *Notary Public.*

No. 7. *Interrogatories to be propounded to Moses Waring, a Witness on behalf of the Complainant in the said cause.*

1. Have you the custody of a deed made by Sidney E. Collins, Wm. F. Cleveland and James Campbell to John A. Campbell, Joseph Wiswall and yourself, bearing date on or about the 19th day of July, 1851, for alley-ways north and east of the block at the northeast corner of Water and St. Louis streets? Or have you ever seen said deed? If yea, set forth in whose handwriting the said deed is, and by whom it was drawn. The deed referred to in this question is the original of Exhibit D to complainant's bill.

K. B. SEWALL, *of Counsel for Compl't.*

Filed March 27th, 1857. GEO. E. HOLT, *Clerk.*

No. 7. *Deposition of Moses Waring.*

The said witness, in answer to the foregoing interrogatory, says, on oath, I have a deed for alley-ways running through the block bounded by Commerce, St. Louis, Water and St. Anthony Streets; said deed is signed by Sidney E. Collins, Wm. F. Cleveland and James Campbell, and dated 19th of July, A. D. 1851. I believe it to be in the handwriting of John A. Campbell. This deed was obtained at my own instance and at my request, and the Exhibit D to the bill is not a correct copy of the original deed, and differs materially from the original. M. WARING.

The foregoing deposition of Moses Waring was taken, subscribed and sworn to, at the city of Mobile, on the 11th day of April, 1857, before Alphonse Hurtel, Esq., a commissioner appointed to take testimony in the said cause.

(The above mentioned deed, marked Exhibit D to the bill, is copied as No. 20 of complainant's testimony. (See page 892.)

Clerk.)

No. 8. *Interrogatories to be propounded to Augustus L. McCoy, a Witness on behalf of the Complainant in the above entitled cause.*

1. Do you know Daniel Chandler and Douglas Campbell? Do you know their handwriting, or the handwriting of either, and which of them?

2. Look upon the paper-writing produced and shown to you at your examination, marked Exhibit O, hereto, and state in whose handwriting the same is, and attach it to your answer.

3. Have you seen a deed, made by Sidney E. Collins and wife to Jacob Magee, for the lot at the northeast corner of Royal and St. Anthony Streets in Mobile, bearing date April 1, 1852, consideration fifteen thousand dollars; and have you seen the mortgage, bearing the same date, made by Jacob Magee to Sidney E. Collins of the same lot, to secure the consideration money; and do you know the handwriting of said deed and mortgage; are they in the same handwriting, and whose is it? Set forth, if you know, and attach true copies of said deed and mortgage to your answer hereto.

4. What business did James Campbell carry on in Mobile in the

years 1851 and 1852? Who was his principal clerk, or chiefly attended to his business? State, if you know.

5. Where or what was the employment of Douglas Campbell in 1851 and 1852? Set forth, if you know.

K. B. SEWALL, *of Counsel for Compl't.*

Filed March 27th, 1857. GEO. E. HOLT, *Clerk.*

No. 8. *Deposition of A. L. McCoy.*

The said witness, in answer to the foregoing interrogatories, says, on oath:—

1. I know both of them. I am perfectly familiar with the handwriting of Douglas Campbell, but not with that of Daniel Chandler.

2. I have looked upon the paper referred to, and attached to my answer as Exhibit (O H). Said paper is in the handwriting of Douglas Campbell.

3. I have seen both of the deeds referred to in this interrogatory. I am not positive, but believe them to be in the handwriting of Daniel Chandler. They are both in the same handwriting. Not having the originals in my possession or under my control, I cannot annex copies.

4. He was the proprietor of a cotton press. I do not know who was his principal clerk, or chiefly attended to his business during that time.

5. He was employed in Campbell's cotton press as a clerk.

A. L. McCOY.

The foregoing deposition of Augustus L. McCoy was taken, subscribed and sworn to, at the city of Mobile, on the 11th day of April, 1857, before Alphonse Hurtel, Esq., the commissioner as aforesaid.

Exhibit referred to in McCoy's Deposition (O H).

1851.

April	3.	To this am't pd. through D. Thompson,	$368	39	$26	77
June	1.	" fencing Collins' property,	20	00	1	20
"	"	" removing mill rocks,	6	00		36
Aug.	20.	" p'd Windham for wharf timber,	89	74	3	79
"	27.	" p'd for plank for fencing property,	46	82	1	90
Sept.	3.	" p'd Windham for wh'f timber,	103	39	4	05
"	15.	" p'd R. Greig on ac't,	300	00	11	00
"	16.	" p'd Windham for wh'f timber,	50	00	1	83
"	17.	" p'd Sidney Douglas for taking acknowledgment, Meslier and wife, and Josh. Kennedy,	10	00		36
Oct.	11.	" p'd Greig on ac't,	100	00	3	00
"	16.	" p'd Windham for timber,	49	75	1	48
"	17.	" p'd Alvares for timber,	40	00	1	19
"	18.	" p'd R. Greig on ac't,	100	00	2	94
Nov.	6.	" p'd R. Greig on ac't,	200	00	5	07
"	6.	" p'd Windham for timber,	58	86	1	48
"	6.	" p'd Capt. Ned ac't timber,	75	00	1	90

Nov. 10.	To p'd R. Greig on ac't,	160	00	3	97
" 15.	" " "	200	00	4	61
" 29.	" " "	440	00	8	90
Dec. 10.	" p'd J. M. Brown on ac't timber,	500	00	8	89
" 18.	" p'd J. M. Brown in full for timber,	219	88	3	51
" 30.	" p'd Capt. Ned on ac't timber,	267	00	3	61
1852.					
Jan. 24.	" p'd Partridge am't of his bill (tin roof on Gallup's office),	95	00		76
" 27.	" p'd Riley for filling bulkhead,	850	00	6	22
Feb. 1.	" drayage on slates,	32	00		21
" 3.	" p'd R. Greig in full for building wh'f,	500	00	3	00
" 3.	" p'd R. Greig for timber furnished by him,	71	29		43
" 5.	" p'd Capt. Ned for timber,	142	40		79
" 18.	" p'd for copper for stores,	303	02	1	48
" 15.	" p'd for hauling ballast,	39	45		12
	Interest,	114	91	114	91
		$5552	90		

1852.					
Mch. 1.	To balance,	$2294	60	$40	78
" 8.	" am't p'd through W. F. Cleveland,	30	00		49
" 10.	" " " "	100	00	1	57
" 11.	" " " "	123	50	1	92
" 13.	" am't p'd J. Riley for hauling ballast,	20	55		32
" "	" " for tiles,	29	34		44
" "	" am't p'd R. Greig's boys for securing raft,	1	00		01
" 14.	" " " " piles,	5	00		08
" 18.	" O. Mazange's bill,	190	91	2	67
" 21.	" am't p'd negroes for hauling timber out of dock,	10	25		13
" 23.	" am't paid through W. F. C.,	146	50	1	89
" 23.	" " "	50	00		64
" 24.	" " "	500	00	6	33
" 30.	" " "	161	50	1	84
" 31.	" " "	100	00	1	11
April 3.	" " "	75	00		80
" 6.	" am't of Skates's bill,	5	00		05
" 16.	" am't of Gliddon's bill,	61	20		48
	" am't p'd D. Cannon, Jr. for flagging,	1135	28		
	Interest,	61	55	61	55
		$5101	18		
	Balance,	2161	01		
		$7262	19		

Rent of wh'f rec'd from F. G. & Co.			$666 67
			666 67
			555 56
			666 67
			674 33
Goodman bill pl'k,	$1199 50		
Less bill timber ag't Goodman,	29 40		
			1170 10
			$4400 00
This p'd to Collins by Goodman, and cr. to the property as above,			600 00
			$5000 00

1851.						
Aug. 27.	By	Fettyplace & Co.'s note for wh'f rent,	$666 67			
		Less disc't	15 56			
				$651 11	$26 48	
Dec. 8.	"	cash from Fettyplace & Co. on ac't wh'f rent,		555 56	10 11	
" 18.	"	140 f't timber used for press, c. 7 t.,		9 80	15	
" 24.	"	Fettyplace & Co.'s note, ac't wh'f rent,	$666 67			
		Disc't,	7 70			
				658 96	9 66	
1852.						
Jan. 7.	"	Fettyplace & Co.'s note, ac't wh'f rent,	$666 67			
		Disc't,	7 00			
				659 67	7 77	
Feb. 18.	"	Fettyplace & Co.'s note, ac't wh'f rent,	$674 33			
			7 08			
				667 25	1 78	
		Interest,		55 95	55 95	
				$3258 30		
		Balance,		2294 60		
				$5552 90		
Mch. 16.	By	cash from Wm. Jones, Jr.,		$5000 00	$72 20	
" 18.	"	from Sidney E. Collins,		368 39	5 17	
April 2,	"	" " (being am't rec'd by S. E. C. from				

		Fettyplace & Co. and ded'ct'd for wh'f rent),	600 00		6 53
April	2,	By cash from Sidney E. Collins (am't of rent collected by him, shanties),	188 00		2 05
"	6.	" from Toulmin (rent of stable),	30 00		30
"	30.	" from Sands & Co., ac't rent of warehouse,	125 00		55
May	21.	" from W. F. Cleveland (being am't of rent collected by him for shanties),	864 00		
		Interest,	86 80		86 80
			$7262 19		
By balance due Collins' property, May 21st, 1852,				$2161 01	

And the said depositions of Joseph J. T. Wilson, John M. Taylor, Augustus L. McCoy, and Moses Waring, with the several exhibits referred to in the same and attached thereto, were filed in my office on the 11th day of April, 1857.

Attest: GEO. E. HOLT, *Clerk.*

Exceptions to Direct-Interrogatories to Wilson et al.

Exceptions filed by the defendants to the direct interrogatories propounded to Joseph J. T. Wilson, John M. Taylor, Moses Waring, and Augustus L. McCoy, viz:—

SIDNEY E. COLLINS

vs.

DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

In Equity.

CIRCUIT COURT OF U. S.,

5th Judicial Circuit, Southern District of Alabama.

Said defendants come and except to the interrogatories propounded to Joseph J. T. Wilson, John M. Taylor, Augustus L. McCoy, and Moses Waring, and for cause of exception to each and every of the interrogatories, defendants say:—

1st. That the mode of examination prevents defendants from a cross-examination in fact.

2d. Because the papers in respect to which the examination is proposed to be had, are not appended, nor is any such description or identification given of them as enables defendants to cross-examine in respect thereto.

3d. Because it appears that the papers proposed to be proven are not to be sealed up with and made a part of the depositions, but are to be retained by complainant.

4th. Because deeds or writings not made exhibits, and not described or identified, are proposed to be proven. And defendants give notice that they will move to suppress so much of the deposi-

tions of said witnesses as shall tend to prove any paper not an exhibit to the bill, or that is not particularly referred to and described in the interrogatories. And defendants file this notice that they require a memorandum and description of all papers in reference to which they propose to examine said witnesses, and also require that they be allowed to inspect the papers, so that they may cross-examine in respect thereto.

CHANDLER, SMITH & HERNDON,
Sol's for Defendants.

Notice of these exceptions served on me, this 4th day of April, 1857.

JOHN T. TAYLOR,
Sol'r for Compl't.

Filed 4th April, 1857. GEO. E. HOLT, *Clerk.*

No. 9. *Interrogatory to be propounded to Robert A. Baker, a witness on behalf of the Complainant in said Cause.*

1. Do you know Duke W. Goodman, of the firm of Fettyplace, Goodman & Co., of Mobile, and are you acquainted with his handwriting? If yea, look upon the papers shown you on your examination hereto, and state whether the same are in his own proper handwriting, and compare copies of said writings which are hereto annexed, and state whether they are true copies of said paper writings so shown to you.

K. B. SEWALL,
of Counsel for Compl't.

Filed 3d March, 1857. GEO. E. HOLT, *Clerk.*

Deposition of Robert A. Baker.

The said witness, in answer to the said interrogatory, says on oath:—

1. I know Duke W. Goodman, of the firm of Fettyplace, Goodman & Co., of Mobile, and am acquainted with his handwriting.

The papers shown are in the handwriting of Duke W. Goodman, that is, the signatures Fettyplace, Goodman & Co., and the copies herto annexed are true copies of the originals shown me.

R. A. BAKER.

The foregoing deposition of Robert A. Baker was taken, subscribed, and sworn to, at Mobile, Ala., before Leonard F. Summers, Esq., a Commissioner duly appointed to take testimony in said cause, and was taken 10th April, 1857.

Exhibits to said Deposition.

(Copy.)

This is to certify that we have hired and taken from Sidney E. Collins, the wharf known as "Collins' wharf," (formerly estate of Kennedy) with the docks and bulkheads belonging to the same. The

wharves to be kept in good repair by said owner, for the term of two years from the first day of November, 1853, at the yearly rent of

$2,000, 12 January, 1854,
2,000, 10 March, 1854, } Dollars, payable.
2,000, 10 May, 1854,

Payments to be made each year as per statement.

And we engage not to let or underlet any part of the said premises, or occupy the same for any business as extra-hazardous on account of fire, without the written consent of the owner, under the penalty of forfeiture and damages. And we do hereby promise to make punctual payment of the rent in manner aforesaid; and quit and surrender the premises at the expiration of the said term, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

Given under our hands the 25th day of June, 1853.

FETTYPLACE, GOODMAN & CO.

(*Copy.*)

We agree with Mr. S. E. Collins to pay him one thousand dollars each year, payable on 1st November, 1854 and 1855, for extra-wharf rent. 25th June, 1853.

FETTYPLACE, GOODMAN & CO.

Filed 13th April, 1857. GEO. E. HOLT, *Clerk.*

No. 10. *Interrogatories to be administered to Joseph R. Eastburn, of Mobile, Alabama, a witness on behalf of the Complainant in said Cause.*

1. Were you employed by Mr. Collins, the complainant, to go round with him and witness a notice given by him to the tenants of the estate situated between St. Louis, St. Anthony, Royal Streets, and the river Mobile? If yea, state when such notice was given, on what occasion, to what tenants, and what the notice was, and by whom given.

2. Were you subsequently employed by Mr. Collins to give the tenants of the same property notice in his name? If yea, please set forth the notices subsequently given by you, the persons to whom given, the terms of the notice, and the time or times, respectively, when given.

3. Why were said notices given, and under whose advice? State, if you know.

4. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

K. B. SEWALL, *Sol. for Compl't.*

Filed 21st October, 1856. GEO. E. HOLT, *Clerk.*

Cross-Interrogatories, filed by the Defendants, to the said Witness.

1. If you state you were employed by Mr. Collins to witness the service of a notice given to the defendants, state if it was in writing? State the names of the tenants on whom it was served, and when it was served?

2. If you answer you were employed to give the tenants notice, state if the notice was in writing, on whom were they served, when were they served?

3. If you state why the notices were given, and answer from whom you derived your information, who told you the reason for giving the notice, when and where was this?

4. If you state under whose advice the notice was given, state from who you derived your information; were you present when the advice was given; what was the advice; when and where given; who was present?

CHANDLER, SMITH & HERNDON,
Sol'rs for Defendants.

Notice is required of the time and place of examining the witness.
Filed, 1st November, 1856. GEO. E. HOLT, *Clerk.*

No. 10. *Deposition of J. R. Eastburn.*

The said witness in answer to the said direct and cross-interrogatories says as follows, on oath:—

1. To the first interrogatory. I was employed by Sidney E. Collins, the complainant, in the fall of 1853, to draw leases to be executed by the occupants of the property described in this interrogatory. After the leases were drawn Mr. Collins called on me to go with him to the tenants, and witness their execution. I went with him. The leases were drawn in the names of Collins and Cleveland. Several of the tenants had not returned to the city. Leases were executed by the following, at that time, to wit: On the 15 December, 1853, J. C. Thompson and Co., Smith and Holt, James Kilduff, Samuel B. Allen, Eckford and Weaver, Hamilton and Young did not execute the lease in consequence of the absence of Mr. Hamilton. Pegues and Winnemore preferred paying the rent in one payment on the first of May, 1854. Abert and Prentice did not execute the lease in consequence of the absence of Mr. Abert. To each of the said tenants, Mr. Collins gave the following notice verbally: "That in taking the leases in the names of Collins and Cleveland, he did not recognize the right of Cleveland, or any one else, to any part of the property, and that the leases were drawn in that way, because of transactions between him and Cleveland, he gave Cleveland an interest in the rents."

2. To the second interrogatory. On the 30th and 31st January, 1855, at the request of Mr. Collins, I served a written notice, signed by Mr. Collins on Rose Chapman and Sibley, Wm. T. Marshall and Co., Labuzan and Austill, Hinson and Holt, McMillan and Son, Hanison, Robinson and Co., and J. Donovan, personally, on each of

the following, L. D. Winnemore, Eckford and Weaver, Abert and Prentice, Lewis and King, Hamilton, Young and Allen, Gallup and Thompson, and James Kilduff. A copy of the following notice was served by leaving at their office with their clerks :—

"Gentlemen: You are hereby notified not to pay rent for the office you occupy on 'Collins's Row,' on Commerce Street, to any person but myself. Yours truly,

SIDNEY E. COLLINS."

On the 1st day of March, 1855, I served a notice, of which the following is a copy, on Rose, Chapman and Sibley, Labuzan and Austill, McMillan and Son, L. D. Winnemore, Eckford and Weaver, Lewis and King, Wm. T. Marshall and Co., Hinson and Holt, Hanison and Robinson, James Kilduff, Gallup and Thompson, J. Donovan, Hamilton Young and Allen :—

"Gentlemen: You are hereby notified, that the property you occupy as an office and premises belongs to me, and no one was authorized to use the name of Collins and Cleveland, or my name, in any manner whatever. And I hereby repudiate said lease and notes so given by you, and shall hold you responsible to me for the rents. I should have given you this notice at an earlier period if I had known that my name had been so improperly used.

SIDNEY E. COLLINS."

3. To the third interrogatory. I cannot tell why said notices were given; neither do I know by whose advice I did what I was employed to do, and did not inquire why or wherefore it was done.

4. To the fourth interrogatory. I do not know anything further. I did what Mr. Collins employed me to do, and did not ask him why he wished it done; and he did not inform me.

1. To the first cross-interrogatory, he answers. The first notice was verbal as stated in my answer to first direct interrogatory; I have given the names in that answer. The notice was given on the 15 December, 1853.

2. To the second cross-interrogatory. A second notice was given in writing, which is copied in my answer to the second direct interrogatory. It was served 30 and 31st January, 1855, on the persons stated in that answer.

3. To the third cross-interrogatory. I know not why the notices were given. Mr. Collins brought me the form of the notice he wished served, and I believe was in his own handwriting. I copied it, and served it as stated, and asked no questions why or wherefore he wished it done. He came to my office, No. 12 Planters Street; no one was present particularly; there might have been persons coming to and going from my office on other business, and my son might have been passing to and fro on other business, but he had nothing to do with this business.

4. To the fourth cross-interrogatory. I do not know by whose advice the notice was given as I before stated. I made no inquiries,

gave no advice, I did what I was employed to do, received my pay; and further I know not. J. R. EASTBURN.

The foregoing deposition was taken, subscribed, and sworn to on the 23d day of November, A. D. 1856, before Frederick S. Blount, Esq., a commissioner duly appointed to take testimony in the said cause.

Filed 29th December, 1856. GEORGE E. HOLT, *Clerk.*

Nos. 11 & 12. *Interrogatories to be administered to John Heald and J. W. Hutchinson, witnesses on the part of the complainant in the said cause.*

1. Do you know the parties in this cause, and how long have you known them?

2. When did you first become acquainted with the compl't, Mr. Collins? Who introduced him to you?

3. Did you, in 1851, rent from said Collins a lot of land north of St. Louis Street, east of Royal Street, and south of St. Anthony? If yea, why did you rent of him?

4. At the time or immediately after you rented said lot of Collins, were any representations made to you as to the title of said lot by the above named defendants Thompson, Cleveland, and Campbell, or any of them? If yea, set forth fully and particularly what was said by them, or any of them?

5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in the cause? If yea, set forth the same fully and at large.

K. B. SEWALL, *Sol'r for Compl't.*

Filed 21st Oct., 1856. GEO. E. HOLT, *Clerk.*

Cross-interrogatories to John Heald and J. W. Hutchinson, by the defendants in said cause.

1. To whom did you give your notes or obligations for the rent? to whom were they payable? From whom did you take a lease? Append the lease or a copy of it.

2. Who acted in making the contract? Did not Collins tell you that he and Cleveland were acting together in renting the property?

3. Please state anything else you may know that will benefit defendants.

Notice of the time and place of examining these witnesses is required. CHANDLER SMITH & HERNDON,

Sol'rs for Defendants.

Filed 3d November, 1856. GEO. E. HOLT, *Clerk.*

No. 11. *Deposition of John Heald.*

The said witness answers and says on oath:—

1. To the first interrogatory. I know the parties: Sidney E.

Collins, since July, 1851; Cleveland, Campbell, and Thompson, I have known some twelve or fifteen years.

2. To second interrogatory. At my carpenter's shop on St. Louis Street, on the 15th July, 1851. He was introduced to me by William F. Cleveland.

3. To third interrogatory. Wm. F. Cleveland introduced Sidney E. Collins to me as the owner of the carpenter's shop, and the land on which it stood. C. W. Dorrance's store now occupying a part of the lot attached to the carpenter's shop. I rented it from Collins because William F. Cleveland told me he was the owner.

4. To fourth interrogatory. Cleveland is the only person of those named, who had any conversation with me on the subject. He said the property belonged to Collins, and he could turn me out of possession in a short time. He advised me to take a lease from S. E. Collins, which I accordingly did. I annex the original lease signed by me marked A, and an agreement marked B.

5. To fifth interrogatory. I know nothing further.

1. To first cross-interrogatory. I do not recollect having given any note. I may have given my note to Mr. Collins, which was paid in work as my rent was paid in that way. I have appended the lease to my answer to 4th interrogatory.

2. To second cross-interrogatory. I made the contract with Sidney E. Collins (Cleveland being present) for the rent. He did not, but said he had been working for some time to get money to carry on the lawsuit.

3. To third cross-interrogatory. He knows nothing further.

JOHN HEALD.

The foregoing deposition of John Heald, taken, subscribed, and sworn to at Mobile, Alabama, on the 26th day of December, A. D. 1856, before F. S. Blount, Esq., a commissioner appointed to take testimony in the said cause.

Exhibit A.

This is to certify that I, John Heald, have hired and taken from S. E. Collins, the carpenter's shop and shed, on St. Louis Street, in the City of Mobile, and now occupied by me as a carpenter shop and shed, for the term of six months, from the 28th day of April, at the yearly rent of one hundred dollars. And I engage not to let or underlet any part of the said premises, or occupy the same for any business as extra hazardous on account of fire, without the written consent of S. E. Collins, under the penalty of forfeiture and damages. And I do hereby promise to make punctual payment of the rent in manner aforesaid, and quit and surrender the premises at the expiration of the said term, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

Given under my hand the 15th day of July, 1851.

JOHN HEALD.

B.

Mobile, Oct. 31st, 1851.

I do hereby agree to, and with S. E. Collins to remove and set back in the proper line, a string of fence on the north side of St. Louis Street, commencing at Water, and running west to the old shanty, and to fit up, and put the gates in good condition; also one gate west of said shanty, and to leave all fencing, &c. in the present condition.

JOHN HEALD.

No. 12. *Deposition of J. W. Hutchinson.*

The said witness answers and says, on oath, as follows:—

1. To first interrogatory. I have known Messrs. Campbell and Cleveland eight or nine years; Mr. Collins five or six years.

2. To the second interrogatory. In Mobile, I do not recollect who introduced Mr. Collins.

3. To the third interrogatory. I did rent the lots described in the third interrogatory from Mr. Collins. My reason for doing so was, that I had improvements on the lots, and although I had paid in advance a year's rent to Mr. Kennedy, I thought it better to give my note for the balance of the year, than to be forced from the possession.

4. To the fourth interrogatory. Representation was made to me by some one that Mr. Collins had gained the lot, but by whom I cannot now recollect.

5. To the fifth interrogatory. Mr. Campbell told me some time in the fall of 1851, that if I would leave my improvements on the lot when I moved off, I should be paid the full value of them.

1. To the first cross-interrogatory. I gave my note to Mr. Collins. I do not recollect any other person being named at that time. Subsequently Messrs. Campbell and Cleveland were named as parties interested. I cannot append the lease or a copy, because the original, after diligent search, I cannot find. It is either lost or mislaid.

2. To the second cross-interrogatory. Mr. Collins made the contract with me for the lease, and to my best recollection his name was the only one signed to it. I do not recollect any conversation between Mr. Collins and myself to the purport inquired of. I annex the lease signed by myself, marked A.

3. To the third cross-interrogatory. I know nothing further.

J. W. HUTCHINSON.

The foregoing deposition of J. W. Hutchinson was taken, subscribed and sworn to at Mobile, Alabama, on the 11th day of December, 1856, before F. S. Blount, Esq., a Commissioner appointed to take testimony in the said cause.

Exhibit A.

Tenant's Agreement.

This is to certify, that I, J. W. Hutchinson, have hired and taken from Sidney E. Collins, a brick shed or shanty, situated on the north-

west angle of St. Louis and Commerce Streets, in the City of Mobile, for the term of six months, from the 28th day of April, at the monthly rent of $\$8\frac{33}{100}$. And I engage not to let or underlet any part of the said premises, or occupy the same for any business as extra hazardous on account of fire, without the written consent of S. E. Collins, under the penalty of forfeiture and damages. And I do hereby promise to make punctual payment of the rent in manner aforesaid, and quit and surrender the premises at the expiration of the said term in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

Given under my hand this fourteenth day of July, 1851.

J. W. HUTCHINSON.

On the foregoing depositions of Easburn, Heald and Hutchinson, the Commissioner certified. "Notice waived, neither counsel being present. F. S. BLOUNT, *Com'r.*"

Filed 29th December, 1856. GEO. E. HOLT, *Clerk.*

No. 13. *Interrogatories to be administered to Robert Ellis, a witness on the part of the complainant in said cause.*

1. Do you know the parties to this suit, and how long have you known them?

2. Do you know the real estate north of St. Louis Street and east of Royal Street, which the complainant recovered of the heirs and executors of Joshua Kennedy? If yea, state whether you or your firm have been employed in making any improvements on any, and what part of it, and when?

3. While you were so employed, or at any time, have you had any conversation with Drury Thompson, Wm. F. Cleveland and James Campbell, or any of them, concerning the title or ownership of said land? If so, set forth what you have heard them, and each of them say, in regard to it, and when, fully and particularly.

K. B. SEWALL, *of Counsel for Compl't.*

Filed 20th December, 1856. GEO. E. HOLT, *Clerk.*

Cross-interrogatories on the part of the defendants to the said witness.

1. If you state you and your firm were employed to make improvements, state by whom. Was the plaintiff present with Cleveland when the contract was made, or while the buildings and improvements were going on? Did they both act together, and were both interested in the work as it progressed?

2. If you state you have had any conversation with Thompson, Cleveland or Campbell, state when and where it was, who was present, what gave rise to the conversation? State particularly all that was said.

3. State all you know that will benefit the defendants.

CHANDLER, SMITH and HERNDON,
Sol'rs for Defendants.

No. 13. *Deposition of Robert Ellis.*

The said witness answering, says on oath:—

1. To the first interrogatory. I have known Sidney E. Collins since 1852. Campbell, Cleveland and Thompson I have known many years.

2. To second interrogatory. I know the property; Mr. Kirkbride and myself, constituting the firm of Kirkbride & Ellis, put up the six stores between Front and Commerce Streets, and St. Louis and St. Anthony Streets; the brickwork and plastering. The stones were put up in 1852.

3. To the third interrogatory. While the buildings were going up, I was told by William F. Cleveland that the land upon which the buildings were going up was Collins's land, and that Collins had recovered it from the heirs of Kennedy, and that Collins had sold some of the same land right opposite on the west side of Commerce Street to James Battle, and that a block of buildings would be put up during the same summer. Cleveland also said that Collins had sold a lot to Charles W. Dorrance on the northwest corner of St. Louis and Water Streets. Drury Thompson told me about the same time that Collins had recovered the property from Kennedy's heirs; that the property had belonged to the father of Collins, and that Kennedy had attempted to swindle him out of it. James Campbell has never said anything to me concerning the title to the premises inquired of.

1. To first cross-interrogatory. Wm. F. Cleveland seemed to be the principal manager in making the contract, and, to my best recollection, it was signed by Cleveland and myself, at his office. I have looked for the contract, but cannot find it. My impression is that it was signed by Cleveland for Collins and Cleveland. My recollection, however, is not very distinct. They both acted together, but I went to Cleveland for materials and advice about the buildings. He seemed to be the entire manager.

2. To second cross-interrogatory. I have no recollection of any person being present at either of the conversations with Cleveland or Thompson. Cleveland always used the word "we" or "us" when I spoke to him about materials; that is, "we" would attend to it, or they would be furnished by "us." The balance of this cross-interrogatory is answered in my answer to 3d direct interrogatory.

3. To third cross-interrogatory. Mr. Collins seemed to give up the supervision of the buildings to Mr. Cleveland. Mr. Collins was not often there; would be there sometimes once or twice a day, and then not there for two or three days. He appeared to give up the management to Mr. Cleveland, and to be engaged in business elsewhere. I received money sometimes from Cleveland and sometimes from Collins. On the final completion of the buildings, the settlement was made with Cleveland. ROBERT ELLIS.

The foregoing deposition of Robert Ellis was taken, subscribed, and

sworn to at Mobile, Ala., on the 7th day of February, 1857, before F. S. Blount, Esq., a commissioner appointed to take testimony in the said cause.

Filed 13th March, 1857. GEO. E. HOLT, *Clerk.*

Nos. 14 and 15. *Interrogatories to be administered to James Battle, John A. M. Battle, and Thomas T. Bolling, Witnesses on behalf of the Complainant in the said Cause.*

1st. Do you know the parties to this suit? If yea, how long have you known each of them?

2d. Have you since 1851 received a conveyance from Sidney E. Collins, absolute or by way of mortgage, for a lot of land above St. Louis Street, in the city of Mobile, and have you such conveyance in your possession? If yea, please annex to your answer a correct copy of the same, and state with whom you bargained for said lot, and what was said as to the title to the same by any of the above named defendants.

3. By whom was said conveyance prepared or drawn, and in whose handwriting is it? What was the value of said lot?

4. Did you give any directions as to the drawing of said conveyance? If yea, to whom, and what were they? State all that transpired in reference to the preparation and execution of said conveyance.

5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

K. B. SEWALL, *of Counsel for Compl't.*

Filed 23d October, 1856. GEO. E. HOLT, *Clerk.*

Cross-Interrogatories by the Defendants to said Witnesses.

1. With whom did you negotiate in any transaction you may have had in reference to the matters inquired of in the interrogatories in chief? Were not Collins, Wm. F. Cleveland, James Campbell, Drury Thompson, or some of these persons, negotiators with you in reference to these matters?

2. Did the parties offering to negotiate with you act in harmony, and as having a joint interest in the matter? Did Collins represent to you who were interested? If so, who?

3. Did you give or take any mortgage? Did you give or take any notes? If so, to whom were such as you made payable, and to whom were they delivered? By whom were such as you, or either of you, took, made?

4. Please append a copy of any paper that you, or either of you, gave or took in any such transaction, and state who drew them.

5. Were you referred to any one as to the state of the titles to the

property you sought or took a mortgage on? If so, to whom were you referred, and by whom were you so referred?

6. Did Collins, during your negotiations, make any statements to you as to in whom the rights or titles to the property were? If so, what were they?

7. If you paid any cash on any purchase you made, into whose hands did you pay it? Did Collins assent to this?

8. Do you know of any building erected on, or improvements made on, the property known as the property in Mobile, known as that recovered by Collins of Joshua Kennedy's heirs or devisees and executors? If so, describe them, their extent and value, and when they were made. State particularly who contracted for such, who superintended the same.

9. Do you know anything of a power of attorney made by Thompson and James Campbell to Sidney E. Collins and Wm. F. Cleveland, in reference to said property, or did you before 1853 or in 1853 hear Sidney E. Collins say anything of its existence or contents thereof? If so, what was it?

10. State all you know in reference to Collins having acted with others about the selling, building, improving, and renting all or any part of the property recovered in said cause of Collins *vs.* Kennedy.

To James and John A. M. Battle alone.

11. Did you consult any attorney as to the goodness of the titles you were buying? If so, who was it? Did you so consult the person as your own attorney? State what fee you paid for the advice. At whose instance did you take such counsel? To whom were you referred, and by whom was the reference made?

To all the said Witnesses.

State any other matter or thing that you may know, which will benefit defendants, as fully and particularly as if you were specially interrogated. CHANDLER, SMITH & HERNDON,
Sol'rs for Defendants.

Notice of the time and place of examining these witnesses is required. CHANDLER, SMITH, & HERNDON,
Sol'rs for Defendants.

Objections by Complainant.

The complainant objects to the last general interrogatory to all the witnesses, because it does not conform to the rule prescribed by the Supreme Court. S. B. SEWALL,
Sol., and of Counsel for Compl't.

Cross-interrogatory and objections filed 1st November, 1856.
GEO. E. HOLT, *Clerk.*

No. 14. *Deposition of James and John A. M. Battle.*

The said witnesses to the said direct and cross-interrogatories (jointly), depose and say on oath as follows:—

1. We have known the parties to this suit, Campbell, Cleveland, and Thompson, for twelve or fifteen years. Collins, we have known about four years.

2. We received, in March, 1852, from Sidney E. Collins, a deed *a deed* for the lot of land between St. Louis and St. Anthony Streets, in the City of Mobile, and annex a copy of said deed, marked A. We negotiated and bargained principally with James Campbell and William F. Cleveland; but Collins was sometimes to see us, and several times with them. They all represented the titles as being good, and agreed they should be satisfactory to us.

3. The deed was drawn by John A. Campbell, and is in his handwriting. The value of the lot was thirty-five thousand dollars.

4. We directed Mr. Campbell to draw us a proper deed, and to see that the titles and everything were all right, which was done to our satisfaction.

5. We know nothing else that will benefit the parties to this suit.

Answers of the said Witness to Defendants' Cross-Interrogatories.

1st. We negotiated principally with James Campbell and Wm. F. Cleveland; Collins was sometimes present.

2. Collins, Cleveland, and Campbell, acted in harmony during the negotiation, and as partners interested. Drury Thompson had no part in the negotiation.

3. We neither gave or took notes.

4. We append copies of all the papers we took in the transaction. They were drawn by John A. Campbell. Said exhibits are marked A, B, C, D, and E, and are attached to our answers to these interrogatories.

5. The parties of whom we purchased may have referred to John A. Campbell as to the titles, but we don't now recollect. They were to be satisfactory to us, and we applied to Mr. Campbell to satisfy ourselves, as his firm were our attorneys, and we thought he knew all about the titles.

6. We do not recollect that Collins made any statement to us as to whom the titles to the property were, while the negotiation was going on.

7. We paid the purchase money to Sidney E. Collins, with the consent of Campbell and Cleveland. Collins delivered us the deed.

8. The only portion of the property inquired of improved by the parties to this suit, that we know of, is the block of stores on Commerce Street, between St. Lewis and St. Anthony. They were built in 1852, are three stories high, and worth (the buildings) about fifty-thousand dollars. We think Pond, and Kirkbride, and Ellis, were the contractors or builders. Cleveland seemed to have the general superintendence, but we sometimes saw Campbell and Collins about them.

9. We know nothing of this inquiry beside the sale to us.

10. We know nothing of this inquiry beside the sale to us.

To further additional addressed to James Battle and John A. M. Battle.

11. We consulted John A. Campbell as to the goodness of the titles we were buying, because his firm were our attorneys. We knew that he had conducted the suit for the recovery of the property, and knew more about the titles than anybody else. We were not referred to him by any person, but went to him as our attorney, and paid him a fee, but do not recollect the amount.

JAMES BATTLE,
J. A. M. BATTLE.

Exhibits A.

STATE OF ALABAMA,
Mobile County.

Know all men by these presents that, in consideration of one dollar, to us paid by James Battle, John A. M. Battle, and Samuel Battle, we have agreed and do agree that the alley-way provided for in the deed of Sidney E. Collins and wife to them, dated 20th March, 1852, and which runs east and west across the property described in the said deed, being the property between Commerce, St. Louis, and St. Anthony Streets, may commence one hundred and one feet, six inches, from St. Louis Street, to conform to the building owned by Waring and Wiswall, measuring on Commerce Street, and may be reduced in width to twenty-eight feet. And we do hereby waive all claim for an alley-way other than is herein described. Witness our hands and seals this 24th March, 1852.

SIDNEY E. COLLINS, [SEAL.]
W. F. CLEVELAND, [SEAL.]
DRURY THOMPSON, [SEAL.]
JAMES CAMPBELL, [SEAL.]

Exhibit A. F. S. B., *Com'r.*

STATE OF ALABAMA,
Mobile County.

Before me, George Conway, a Notary Public in and for Mobile County, and State aforesaid, personally appeared the foregoing Sidney E. Collins, W. F. Cleveland, Drury Thompson, and James Campbell, who acknowledged each, that they signed, sealed and delivered the within instrument of writing on the day and year, and for the uses and purposes therein expressed.

Witness my hand and seal, this 25th day of March, A. D. 1852.

GEORGE CONWAY, [SEAL.]
Notary Public.

B.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that I, William D. Primrose, of the county aforesaid, in consideration of five dollars to me, paid by

James Battle, John A. M. Battle and Samuel G. Battle, and of the sale by Sidney E. Collins, and wife, to them of the lands between St. Anthony, St. Louis, and Commerce Streets, and an alley-way running north and south through the centre of said square, lying between said streets and Water Street, which is now being completed, and the money for which is about to be paid. I do hereby ratify and confirm the deed made by said Collins, and the other agreements, and hereby remise, release and quit claim to the said James, John A. M. and Samuel, the said lands therein set forth.

Witness my hand and seal, 24th March, 1852.

WM. D. PRIMROSE. [SEAL.]

In presence of J. A. CAMPBELL.

Exhibit B. F. S. B. *Com'r.*

C.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that in consideration of one dollar to us, paid by James Battle, John A. M. Battle and Samuel G. Battle, we have agreed and do agree, that the alley-way provided for in the deed of Sidney E. Collins, and wife, to them, dated 20th March, 1852, and which runs east and west across the property described in said deed, being the property between Commerce, St. Louis and St. Anthony Streets, may commence one hundred and one feet six inches from St. Louis Street, to conform to the building, owned by Waring and Wiswall, measuring on Commerce Street, and may be reduced in width to twenty-eight feet.

And we do hereby waive all claim for an alley-way other than is herein described.

Witness our hands and seals this 24 March, 1852.

SID. E. COLLINS, [SEAL.]
W. F. CLEVELAND, [SEAL.]
DRURY THOMPSON, [SEAL.]
JAMES CAMPBELL, [SEAL.]

Exhibit C. F. S. B., *Com'r.*

THE STATE OF ALABAMA,
Mobile County.

Before me, George Conway, a Notary Public in and for Mobile County and State aforesaid, personally appeared the foregoing Sidney E. Collins, William F. Cleveland, Drury Thompson and James Campbell, who acknowledged each that they signed, sealed and delivered the within instrument of writing, on the day and year, and for the uses and purposes therein expressed.

Witness my hand and seal, this 25 day of March, A. D. 1852.

GEORGE CONWAY, [SEAL.]
Notary Public.

"Received for record, April 6, 1852."

THE STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said County and State, do hereby certify that the foregoing is a true and correct copy or transcript taken from the records, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and seal of said Court, this 30th day of January, A. D. 1856.

[L. S.] JNO. A. HITCHCOCK, *Judge.*

D.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these, I, Sidney E. Collins and Louisa R. Collins, his wife, in consideration of thirty-five thousand dollars to us in hand paid by James Battle, of the city aforesaid, Samuel G. Battle, of the city aforesaid, and John A. M. Battle, of the city aforesaid, in the proportion of one-half by the said James, and the other half by the other parties jointly, we have granted, bargained and sold, and do hereby grant, bargain and sell unto the said James Battle, Samuel G. Battle and John A. M. Battle, those two blocks of land in the city of Mobile, situate on Commerce Street of the said city, and on the west side thereof, and between St. Anthony and St. Louis Streets of the same, bounded on the north by St. Anthony Street, on the east by Commerce Street, on the south by St. Louis Street, and on the west by an alley-way 20 feet wide, running from St. Louis to St. Anthony Street twenty feet wide, which separates this property from the property now occupied by Moses Waring and Joseph Wiswall, and the property on Water Street occupied by the grantors hereof, which alley-way on the west is to remain open and free to the grantors, and their heirs, executors and assigns. To have and to hold the said parcels of land to the said James Battle, Samuel G. Battle and John A. M. Battle, in the proportion of the consideration money advanced by them, their heirs and assigns forever, with the following reservation: that an alley-way shall be laid off, and shall remain free and open for all persons, which shall commence one hundred and one feet from St. Louis Street, measured on the line Commerce Street *Street*, and shall be thirty feet in width parallel to St. Louis Street, through the entire width of the said lots. And I, Sidney E. Collins, for myself, my heirs and assigns, do covenant with the said James Battle, John A. M. Battle and Samuel G. Battle, their heirs and assigns, that I have a good right to sell and to convey the said lands as herein set forth, and that I, my heirs and assigns to them, their heirs and assigns in the proportions hereby conveyed, will forever warrant and defend, the said parcels of land unto them, their heirs and assigns.

In testimony whereof, we have hereto set our hands and seals, this the 20th day of March, 1852.

SID. E. COLLINS, [SEAL.]
LOUISA R. COLLINS, [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

Before me, George Conway, a Notary Public for the County and State aforesaid, personally appeared Sidney E. Collins and his wife, Louisa R., who acknowledged each, that they signed, sealed and delivered the within deed on the day and year, and for the uses and purposes therein expressed, and the said Louisa R., wife of the said Sidney E. Collins, being examined separate and apart from her said husband, acknowledged that she freely and voluntarily renounced all claim and right of dower in and to the within mentioned real estate, without any fear, threats or compulsion of her said husband.

In testimony whereof, I have hereto set my hand, and seal official at Mobile, this 20th day of March, 1852.

[L. S.] GEORGE CONWAY, *Notary Public.*

Exhibit D. F. S. B. *Com'r.*

Received for record March 25, 1852.

E.

STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that we, James Campbell and Mary C., his wife, William F. Cleveland and M. Cleveland, his wife, and Drury Thompson, of the county aforesaid, in consideration of five dollars severally to us paid by James Battle, Samuel G. Battle, and John A. M. Battle, have ratified and confirmed, and by these presents do ratify and confirm to them the said James, Samuel, and John A. M. Battle, and their heirs and assigns forever, all the estate, right, title, interest, claim, and demand, conveyed to them by the said Sidney E. Collins, in the foregoing deed on this paper written, in and to the parcels of land specified in the said deed, bounded north by St. Anthony street, east by Commerce street, south by St. Louis street, and west by an alley-way (with the reservation of an alley-way through the same), so that neither we, or either of us, by any manner or means, shall or may impair or defeat the same, but therefrom by these presents we and each of us, and all persons claiming from us, shall be and now are forever debarred. Witness our hands and seals this 20 March, 1852.

JAMES CAMPBELL, [SEAL.]
MARY C. CAMPBELL, [SEAL.]
DRURY THOMPSON, [SEAL.]
W. F. CLEVELAND, [SEAL.]
M. CLEVELAND. [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

Before me, George Conway, a Notary Public in and for the county and State aforesaid, personally appeared James Campbell and Mary C., his wife, William F. Cleveland and M. Cleveland, his wife, and Drury Thompson, who acknowledged each that they signed, sealed, and delivered the within deed on the day and year, and for the uses and purposes therein expressed. And the said Mary C., wife of the said James Campbell, and the said M. Cleveland, wife of the said William F. Cleveland, and each of them, being examined by me separate and apart from their said husbands, acknowledged that they freely and voluntarily renounced all claim and right of dower in and to the within described real estate, without any fear, threat, or compulsion of their said husbands.

In testimony whereof I have hereunto set my hand and seal official at Mobile this 20 day of March, A. D. 1852.

[L. S.] GEORGE CONWAY, *Notary Public.*

THE STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said county and State, do hereby certify that the foregoing is a true and correct copy or transcript taken from the records as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and seal of said Court this 30th day of January, A. D. 1856.

[L. S.] JNO. A. HITCHCOCK, *Judge.*
E. F. S. B., *Com'r.*

The foregoing deposition of James Battle and John A. M. Battle was taken, subscribed, and sworn to at the city of Mobile on the 27th day of November, 1856, before Frederick S. Blount, Esq., a commissioner appointed to take testimony in the said cause.

Filed March 15th, 1857. GEO. E. HOLT, *Clerk.*

No. 15. *Deposition of Thomas T. Bolling.*

The said witness, in answer to the several direct and cross-interrogatories aforesaid propounded to him, answers and says on oath as follows:—

1. I have known Sidney E. Collins since about 1852. Campbell, Cleveland and Thompson I have known about 15 years.

2. I purchased a lot of land as stated in this interrogatory, and particularly described in the deed marked A, hereto attached, from Sidney E. Collins and wife. I bargained with William F. Cleveland and James Campbell, more particularly with Cleveland. Campbell, Cleveland, and Thompson assured me that the title was perfect in Collins, under the decision of the Supreme Court of the United States.

3. I do not know the handwriting of the deed, and cannot answer. The value of the lot was fifteen thousand dollars.

4. I only required that Collins and wife, Campbell, Cleveland, and Thompson should join in the title.

5. I know nothing further.

Answers of said Witness to the Cross-interrogatories.

1. I have answered this question in my answer to the second direct interrogatory.

2. The parties who negotiated with me acted harmoniously. Cannot recollect that I had any conversation with Collins on the subject of the purchase. After the purchase, Collins represented to me that my title to the property was perfect.

3. I gave a mortgage to Sidney E. Collins, a copy of which, marked B, is hereto attached, was given to secure notes for ten thousand dollars and interest, being two-thirds of the purchase-money; said notes were made by me payable to Sidney E. Collins or order, and were delivered either to Thompson or Cleveland.

4. I append copy of deed marked A from Collins and wife to me, a copy of ratification of the sale from Cleveland, Campbell, and Thompson, marked C, and copy of mortgage from myself to Sidney E. Collins, marked B. The mortgage describes the notes given by me, which the mortgage was given to secure. I do not know who drew them.

5. I was referred to John A. Campbell, Esq., by William F. Cleveland, James Campbell, and Drury Thompson.

6. I had no conversation with Collins on the subject. I do not recollect that I knew him at that time.

7. I paid five thousand dollars cash to Cleveland, Campbell, and Thompson. Collins never dissented from the payment so made.

8. Campbell, Cleveland, and Thompson put up buildings on the property between Commerce and Front streets, and from St. Louis to St. Anthony; knows nothing of the value; thinks there are six stores; Rives, Battle, & Co. put up four stores on the west side of Commerce street from St. Louis to St. Anthony; knows nothing of the value; Dorrance & Sons put up one store on corner (northwest) of St. Louis and Water, and Robert W. Smith one adjoining on the north. I know nothing of the value of either. The other improvements on the property are unimportant. J. P. Pond superintended the erection of Cleveland & Co.'s buildings. Tabor superintended Dorrance & Battle's. I do not know who superintended Smith's.

9. I do not know anything of the power of attorney inquired of.

10. Knows nothing. THOMAS T. BOLLING.

Exhibit A.

(An imperfect copy of which is attached to Wilson and Taylor's depositions, see page 239.)

STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that I, Thomas T. Bolling, of said county and State, in consideration of the sum of thirteen thousand, two hundred dollars to me in hand paid by Sidney E. Collins, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, convey, and confirm unto the said Sidney E. Collins, his heirs and assigns forever, all that lot or parcel of land situate, lying, and being in the city of Mobile, county of Mobile, State aforesaid, situated on the southeast corner of Water and St. Anthony Streets, bounded as follows, to wit: On the west by Water Street, on which it fronts one hundred and fifteen feet; on the north by St. Anthony Street, on which it fronts one hundred feet; on the east by an alley-way, on which it fronts one hundred and fifteen feet; on the south by an alley-way, on which it fronts one hundred feet, being the same property conveyed by said Sidney E. Collins and Louisa R., his wife, by deed bearing date the 11th day of April, 1853, to the said Thomas T. Bolling. Together with all and singular the tenements, hereditaments, rights, members, privileges and appurtenances unto the above-mentioned and described premises belonging, or in any wise appertaining. To have and to hold the above granted and described premises with the appurtenances unto the said Sidney E. Collins, and to his heirs and assigns, and to their sole and only separate use, benefit, and behoof forever. Provided always, and these presents are upon this express condition, that if the said Thomas T. Bolling, his ex'rs, adm'rs, or assigns, shall well and truly pay to the said Sidney E. Collins, his ex'rs, adm'rs, or assigns, the sum of thirteen thousand and two hundred dollars, due by five certain promissory notes signed by the said Thomas T. Bolling, dated Mobile, April 11th, 1853, payable to the order of Sidney E. Collins, negotiable and payable at the Bank of Mobile; one for $800, due 1 April, 1854; one for $800, due 1 April, 1855; one for $800, due 1 April, 1856; one for $800, due 1 April, 1857; and one for $10,000, due 1 April, 1857; then these presents shall cease, determine, and be void, otherwise to be and remain in full force.

Given under my hand and seal this 11th day of April, in the year of our Lord one thousand eight hundred and fifty-three.

THOMAS T. BOLLING. [SEAL.]

Signed, sealed, and delivered in presence of '

(Here follows certificate of acknowledgment before Mordecai Thompson, Notary Public, as on page 798 of transcript, Taylor's deposition.)

THE STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said county and State, do hereby certify that the foregoing is a true and correct copy or transcript, taken from the record as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and seal of said court this 30th day of January, A. D. 1856.

[L. S.] JNO. A. HITCHCOCK, *Judge.*

B is deed of conveyance for foregoing property to Bolling from Collins and wife, and ratification of same by Campbell and wife, Cleveland and Thompson, Exhibit No. 8 to Wilson and Taylor's depositions, page and marked "Rec'd for record April 30th, 1853, with certificates thereon." (See page 792.)

The foregoing deposition of Thomas T. Bolling was taken, subscribed and sworn to, at Mobile, on the 11th Dec., 1856, before F. S. Blount, ex-commissioner, and filed 15th March, 1857.

GEO. E. HOLT, *Clerk.*

No. 16. *Interrogatories to be administered to Augustus R. Meslier, a Witness on behalf of the Complainant in the said cause.*

1. Did you ever lease the lots on the east or north of the Campbell & Cleveland building, at the northeast corner of St. Louis and Water Streets, in Mobile? If yea, in whose behalf, to whom, and when, and what was the boundary of the lot so leased by you?

2. Did you ever hear of any claim to alleys on the east or north of said building? If yea, when was said claim first made, and by whom?

3. Did you, and the other heirs and executors of Joshua Kennedy, ever recognize such claim? Or did they, or any of them, deny it? State in full all that you know on the subject of such claim, and when alleys were first recognized and opened.

4. Do you know in what manner said lots east and north of the said brick building were occupied from 1844 to 1849, or any part of that time, and particularly the parts of said lots adjoining said brick building? If yea, set forth fully all that you know on the subject.

K. B. SEWALL, *of Counsel for Complainant.*

Filed 5th February, 1857. GEO. E. HOLT, *Clerk.*

Cross-interrogatories filed by the Defendants in said cause to the said Witness.

1. When were the brick buildings, known as the Campbell & Cleveland buildings, put up? Was it before or after the death of Joshua Kennedy? State the year when they were erected, to the best of your knowledge and belief.

2. Were said buildings put up with windows and doors fronting the north and east? If so, state the number of windows, to the best

of your knowledge and belief, that are on the north and east sides of the buildings.

3. Were not side-walks made on the north and east side of the said building, and pavements of brick or flagstone constructed around said building? and particularly state as to the north and east side. And was not this done in the lifetime of Joshua Kennedy?

4. If you state that the lots on the north and east side of said building were used and occupied, state how they were, and the year, were they inclosed, what was put on the lots, and was anything put on the lot that obstructed or closed up the first thirty feet north and east of said building.

5. Did, or not, Joshua Kennedy, in his lifetime, put up a building on the west side of Water Street, opposite the building of Cleveland & Campbell? If so, state if he did, or not, leave room for an alley-way, corresponding with the one on the north side of the building of Campbell & Cleveland, or make side-walks on the north side of his building.

6. Did, or not, J. Kennedy, in his lifetime, admit and recognize the alley-ways east and north of Campbell & Cleveland's building, and in his deeds were they not referred to?

7. Relate all you know that will benefit the defendants, as if particularly interrogated thereto.

CHANDLER, SMITH & HERNDON, *for Defendants.*

Objections by Def'ts.

The defendants object to the direct interrogatories, because the complainant has not complied with the 71st Rule of Practice for the Courts of Equity of the U. States.

CHANDLER, SMITH & HERNDON, *for Defendants.*

Filed 13 Feb., 1857. GEO. E. HOLT, *Cl'k.*

No. 16. *Deposition of A. R. Meslier.*

The said witness answering, says, on oath:—

1. I did, on behalf of my wife, to a man named Harvey Snow. I do not recollect exactly, from 1845 to 1850.

2. I have heard of a claim to alley-ways, but not until I had possession of said alley-ways, and wished to sell or dispose of the same. It was first set up, about a year or so previous to the Collins suit, by Moses Waring and John A. Campbell.

3. As for myself, I never recognized the right to alley-ways to Moses Waring or John A. Campbell, inasmuch as the deed given to them by Joshua Kennedy, deceased, only called for a hundred feet square, and made no mention of alley-ways. I do not know as to the other heirs, or their opinions. I, myself, as I said, always opposed it.

4. They were occupied as a wood yard the greater portion of that time, and rented by myself, as agent of Mary E. Meslier.

Answers to Cross-interrogatories.

1. I believe before his death, I cannot say positively.
2. Yes; they were put up with windows and doors fronting north and east. I never have counted the windows or doors, or paid any particular attention to the number of the same.
3. Yes; side-walks were made. I do not know whether they were made before Mr. Kennedy's death or not.
4. They were occupied as a wood yard, and the wood was piled up against the brick building, and of course the said 30 feet claimed as alley-ways, were obstructed.
5. I know nothing about it.
6. I know nothing about it.
7. I know nothing.

A. R. MESLIER.

The foregoing deposition of A. R. Meslier was taken, subscribed, and sworn to at Mobile, Ala., on the eleventh day of April, 1857, before Leonard F. Summers, Esq., a commissioner appointed to take testimony in the said cause.

Filed, 13th April, 1857. GEO. E. HOLT, *Clerk.*

Nos. 17 and 18. *Interrogatories to be administered to Harvey Snow and J. W. Hutchinson, Witnesses on behalf of the Complainant in said cause.*

1. Did you ever rent and occupy a lot of land on the square bounded by St. Louis, St. Anthony, Water and Commerce Streets, in Mobile? If yea, when and how long, and what was the extent of the lot so rented and occupied by you, and how was said lot bounded?
2. Was said lot occupied by you north or east of the brick building at the northeast corner of St. Louis and Water Streets, known as the Campbell and Cleveland Building, and did it abut on said building, or was it separate from it?
3. For what purpose, and in what manner did you occupy said lot?
4. While you occupied said lot, did you hear of any claim to alleys around said brick building on the north or east side? If yea, who made such claim? for whom, and when was it first made? State all you know of any such claim, and when and by whom it was set up and first heard of?

K. B. SEWALL,
Of Counsel for Compl't.

Filed, 5th February, 1857. GEO. E. HOLT, *Clerk.*

Cross-Interrogatories to said Witnesses, and Objections filed by the Defendants in the said cause.

The defendants object to the direct interrogatories filed in this case: Because the compl't has not complied with the 71 Rule of Practice for the Courts of Equity of the U. States, and not waiving the objection, files the following cross-interrogatories to the witnesses, Snow and Hutchinson:—

1. When were the brick buildings, known as the Campbell and Cleveland Buildings, put up? Was it before or after the death of Joshua Kennedy? State the year when they were erected, to the best of your knowledge and belief.

2. Were said buildings put up with windows and doors fronting the north and east? If so, state the number of windows, to the best of your knowledge and belief, that were on the east and north side of the building.

3. Were not side-walks made on the north and east side of the said building, and pavements, with brick or flagstone, constructed around said building? and particularly state as to the east and north side. And was not this done in the lifetime of Joshua Kennedy?

4. If you state that the lots on the east and north side of said building were used and occupied, state how they were, and the year; were they inclosed; what was put on the lot, and was anything put on the lot that obstructed or choked up the first 30 feet, north and east of said building?

5. Did or not Joshua Kennedy, in his lifetime, put up a building on the west side of Water Street opposite the building of Cleveland and Campbell? If so, state if he did not leave room for an alley-way corresponding with the one on the north side of the building of Campbell and Cleveland, and make side-walks on the north side of his building?

6. Did or not J. Kennedy, in his lifetime admit and recognize the alley-ways east and north of Campbell and Cleveland's building, and in his deeds, were they not referred to?

7. State all you know that will benefit the defendants, as if particularly interrogated thereto.

CHANDLER, SMITH & HERNDON,
Sol'rs for Defendants.

Filed, 13th February, 1857. GEO. E. HOLT, *Clerk.*

No. 17. *Deposition of Harvey Snow.*

The said witness answers and says, on oath, as follows:—

1. I rented a lot on said square, I think, in the years 1846 and 1847. The lot I rented fronted on Water Street, I think, about 55 feet on the west; on the south by Campbell and Cleveland's brick building; on the north by a vacant lot in said square; on the east by vacant ground in said square.

2. It was north of said building. It went right up to said building. I used clear up to the said building to put wood on.

3. I occupied it as a wood-yard to store wood.

4. I heard some one, but whom I do not recollect, tell me not to put wood on the side-walk near the building. I told, whoever it was, I had rented up to the said brick building, and I intended so to use it, and I accordingly so did, and piled wood clear up against the said brick building. I forget who claimed, or made said claim or

statement. I think it was some of the grocery men who rented said brick building.

Answers to Cross-Interrogatories.

1. I do not recollect when they were built.
2. There were windows and doors on the north and east sides. I do not recollect the number.
3. There are side-walks on the north and east sides of said building; on the north, I think, of flag-stone. I do not recollect whether the pavements on the east were of brick or flagstones. I do not recollect the time. I am under the impression it was in his lifetime, but I cannot say.
4. The lot I had was north of said building, and was used as a wood-yard. The lot, east of said building, was vacant then. On the north of said building I put wood on the same clear up to the said brick building, and, of course, obstructed said 30 feet.

1. I do not know.
2. I do not know.
3. I do not know anything more. H. SNOW.

The foregoing deposition of Harvey Snow was taken, subscribed, and sworn to, at Mobile, Ala., on the 11th day of April, 1857, before Leonard F. Summers, Esq., a commissioner appointed to take testimony in the said cause.

Filed, 13th April, 1857. GEO. E. HOLT, *Cl'k.*

No. 18. *Deposition of J. W. Hutchinson.*

The said witness answers, and says on oath:—

1. He did rent and occupy said lot. He says he was clerk for Harvey Snow, and that said Snow rented said lot from 1842 to 1848, and that he rented and occupied it on his own account from 1848 to 1850; said lot was bounded on south by St. Louis; on the east by Commerce; on the north by St. Anthony, and on the west by Water Street, and the brick building, then known as the Bank Building, afterwards owned by Moses Waring.
2. He says he knows nothing of the building known as the Campbell and Cleveland Building. That there was no such building at the time he occupied said lot. The only building on the square bounded by St. Louis, St. Anthony, Water and Commerce Streets, was a brick building on the southwest corner of said square, and that brick building was then owned or claimed by the Branch Bank of the State Bank at Mobile, and a small building or office built by Snow on the corner of St. Louis and Commerce Street of said square. That Snow rented the whole of said square except said brick building, and so did he, the witness. That they occupied and used said lot as a wood, lumber, and coal-yard, and that they piled their lumber, &c., up against said brick building until 1849, when a fence was put up, making an alley-way between said brick building and the lot he occupied.

3. He has answered this interrogatory in his answer to the second.

4. All he knows is what he has stated, in answer to the second interrogatory. He never heard of any such claim, unless the putting up of said fence around said brick building be a claim, and that was in 1849. He don't know who had said fence built.

Answers to Cross-Interrogatories.

1. He says he does not know when Joshua Kennedy died, and he does not know anything of the Campbell and Cleveland buildings.

2. He does not know.

3. He does not know.

4. He has already stated how the said lots were used, when he rented them, and when Snow rented them, to wit, as a wood-yard, and that wood, lumber, &c., were piled up against the brick building claimed by the said bank; they were not inclosed.

5. He does not know.

6. He does not know.

7. He knows nothing more about the matter unless it be, that he rented the said lots from the heirs of Kennedy, and he supposes said Kennedy must have been dead.

J. W. HUTCHINSON.

The foregoing deposition of J. W. Hutchinson, was taken, subscribed, and sworn to, at Mobile, Ala., on the 18th day of March, 1857, before Leonard F. Summers, Esq'r, a commissioner appointed to take testimony in the said cause.

No. 19. Deed from Joshua Kennedy and wife to Campbell and Cleveland, dated 31st January 1835, for lot one hundred feet square, being Exhibit F to complainant's bill. (See the same copied, page 103 of Transcript.)

No. 20. Transcript of deed from Collins, Cleveland, and Campbell to J. A. Campbell, Joseph Wiswall, and Moses Waring, alluded to in Waring's testimony, as (Exhibit D), and here now inserted, to wit:—

THE STATE OF ALABAMA,
Mobile County.

Whereas, in the sale of Joshua Kennedy to James Campbell and William F. Cleveland for a block of land situate at the corner of St. Louis and Water Streets, bounded north by Water Street, south by St. Louis Street, and measuring one hundred feet square, it was agreed that certain alley-ways were to be established; and whereas the present occupants and owners of said land, John A. Campbell, Joseph Wiswall, and Moses Warring, claim the benefit of said contract for a settlement of that claim, and with a view of adjusting the matters fully between them, and as and in consideration of five dollars to us paid by said Campbell, Wiswall, and *Warren*, and in extinguishment of all other claims for alleys under said contract, and as a final settlement, we agree and hereby convey for that purpose,

for an alley-way, the land commencing on Water Street, one hundred and thirty feet from the northeast corner of St. Louis and Water Streets, and running south from thence, along the line of Water Street, to the line of the lot so conveyed by Joshua Kennedy, and now held by said parties, and from that line to extend across the block made by Water, St. Louis, St. Anthony, and Commerce Streets, parallel to St. Louis Street, with the width described as aforesaid on Water Street, which said parcel of land shall remain as an alley-way, free and open for the use and benefit of said property, and not to be closed without the consent of the said parties, their heirs and assigns; and upon the same conditions we agree that an alley-way shall be run from north to south across the same block, parallel to Commerce Street, commencing on St. Louis Street, one hundred feet from the northwest corner of Commerce and St. Louis Streets, and running from thence to the line of the lot above described, and extending with the same width to St. Anthony Street, which said alley-way shall be kept open for the use and benefit of said property, and not to be obstructed or closed except by the consent of said parties, their heirs and assigns.

Witness our hands and seals, this 19th day of July, 1851.

SIDNEY E. COLLINS. [SEAL.]
W. F. CLEVELAND. [SEAL.]
JAMES CAMPBELL. [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that on the 19th day of July, A. D. 1851, before me, George Conway, a notary public in and for Mobile County, and State aforesaid, personally appeared the within named Sidney E. Collins, Wm. F. Cleveland, and James Campbell, and acknowledged each that they signed, sealed, and delivered the within instrument of writing on the day and year and for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my seal official, this the day and year above written.

[SEAL.] GEORGE CONWAY, *Notary Public.*

"Received for record Sept. 27, 1851."

THE STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said county and State, do hereby certify that the foregoing is a true and correct copy or transcript taken from the records, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and seal of Court, this 22d day of April, A. D. 1857.

[SEAL.] JOHN A. HITCHCOCK, *Judge.*

Filed 28 April, 1857. GEO. E. HOLT, *Clerk.*

(The foregoing deed is also Exhibit D to the complainant's bill. See page 97.)

No. 21. *Triplicate deed of the 15th day of February, 1851, from Sidney E. Collins to William F. Cleveland, James Campbell, and Drury Thompson, being Exhibit A to Complainant's Bill (see page 82), and G to Thompson's Answer (page 255), before copied, together with all indorsements thereon, and is now again inserted, with the following Agreement of Counsel:—*

Agreement.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.* } Cir. Ct. of U. S., Fifth Cir. In Chancery.

On the hearing of this cause, the defendants produced one of the deeds executed in triplicate, of 15th February, 1851, and, at request of complainant, admits the body of the deed (which is signed by complainant) to be in the handwriting of Drury Thompson, being one of the three not heretofore exhibited to the witnesses.

CHANDLER, SMITH & HERNDON,
Sol's for Defendants.

K. B. SEWALL, *Sol. for Compl't.*

Filed 28th April, 1857. GEO. E. HOLT, *Clerk.*

Deed.

THE STATE OF ALABAMA,
Mobile County.

Whereas I, Sidney E. Collins, of the county of Liberty, State of Texas, have commenced a suit in the Circuit Court of the United States for the Southern District of Alabama, against the heirs and representatives of Joshua Kennedy, deceased, for the land known as the south half of the Alexander Baudain tract, bounded by the Mobile River, St. Louis Street, Royal Street, and a line equally dividing the Alexander Baudain tract, and have obtained a recovery therefor in the said Court, and which judgment has been affirmed in the Supreme Court of the United States; and whereas William F. Cleveland, James Campbell, and Drury Thompson have heretofore advanced me money, and have rendered me aid and assistance in the premises, whereby great benefits have accrued to me, and in consideration of five dollars to me in hand paid by the said parties, the receipt of which I have acknowledged, I do hereby convey to the said parties the undivided two-thirds parts of all the land embraced in the said recovery, and all the estate, right, title, claim, and interest therein, that I have, hold, possess, and enjoy in the said lands, or that I may hereafter have, hold, possess, and enjoy in the said lands; also the undivided two-thirds parts of all the recovery I may make or obtain for rents, profits, sales of land, or derive in any manner from the accounts to be taken in said suit. And it is hereby fully understood that the said parties shall be fully interested in the two-thirds of the said judgment, but on this condition, that they shall absolutely as-

sume the two-thirds parts of all the fees and expenses of said suit, and of the costs and charges that have heretofore been made; and should the defendants occasion further litigation, that the said parties shall pay two-thirds of the future expenses. It being further understood, that I, the said Sidney E. Collins, do further covenant and agree, for the considerations aforesaid, and bind and obligate myself, to obtain the relinquishment of dower of my wife Louisa R. Collins to the land and premises hereby conveyed to the said Drury Thompsom, James Campbell, and William F. Cleveland, their heirs and assigns forever.

As witness whereof, I, the said Sidney E. Collins, have hereto set my hand and seal, this 15th February, 1851. Executed in triplicate.

SIDNEY E. COLLINS. [SEAL.]

Indorsements.

Drury Thompson, James Campbell, and William F. Cleveland jointly and severally agree with the said Sidney E. Collins to accept this agreement and conveyance on the terms stated therein, and hereby pledge to him and to one another their said interests for the fulfilment of the contract therein made for the payment of the expenses, charges, and costs of suit.

Witness our hands and seals, this fifteenth day of February, eighteen hundred and fifty-one. Executed in triplicate.

DRURY THOMPSON. [SEAL.]
W. F. CLEVELAND. [SEAL.]
JAMES CAMPBELL. [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that Sidney E. Collins, Drury Thompson, William F. Cleveland, and appeared personally before me, William Brooks, a notary public for the county and state aforesaid, duly commissioned and qualified, and severally acknowledged that they signed, sealed, and delivered the foregoing agreement or instrument of writing on the day and year, and for the uses and purposes therein mentioned.

Given under my hand and seal of office, this fifteenth day of February, A. D. 1851.

[SEAL.] WILLIAM BROOKS, *Notary Public.*

The other two parts of the said deed of 15 February, 1851, are also now produced, and are on file in the said cause, one of which is marked on the back thereof.

"Received in office for record 16 Dec. 1853, and recorded in Book No. 6, N. S. on page 370, 371. E. RUST, *Judge.*"

No. 22. *Will of Joseph Collins, dec'd, etc., from the Record in the case of Sidney E. Collins* vs. *The Executors and Heirs of Joshua Kennedy, deceased and others.*

Book A, page 1.

The honorable County Court of Jackson County met according to

law, 23d of May, 1813. Present, Thomas Bilbo, Chief Justice, Benjamin Youngblood, and Robert Williamson.

Motion by Edwin Lewis to prove the will of Joseph Collins deceased, and that letters testamentary be issued to Benjamin Lanier, in right of Elizabeth his wife, one of the executors appointed in said will, on which the will was proven to the court, and proven by the oath of E. Lewis, one of the subscribing witnesses, and ordered to be recorded, and that letters testamentary be granted according to motion; and *that motion* that George Farragut, James Ware, and John B. Budo be appointed appraisers of the personal estate of said deceased, and return the same *in the same*, in three months to the chief justice of the County Court.

Benjamin Lanier appointed in open court, and took the oath of executor to the will of Joseph Collins deceased.

(Signed) WILLIAM HOWELL, *Clerk.*

WEST FLORIDA, *Pascagoula.*

In the name of God, amen. I, Joseph Collins, of this place, being weak in body, though sound mind and memory, do ordain and appoint this my last will and testament, revoking all other wills heretofore made by me. First. It is my will and desire that all my just debts shall be paid, after which I will and bequeath unto my three sons George Emly, Sidney Eugene, and Joseph Collins, all being the children of Elizabeth Wilson, all the residue and remainder of my estate, both real and personal, of whatever nature, in equal shares, which remain after payments of my just debts, to them and to their heirs forever. And for the purpose of carrying this, my last will and testament, into execution, I do ordain, constitute, and appoint Elizabeth Wilson, William Wilson, of this place, and Nicholas Cook, of Mobile, my executors, any two of whom may do any act as executors to bind the whole; of and in case any one or more of them should die, then the vacancy occasioned by such shall be filled, the nomination and appointment of the parish judge, or such other officer as may have jurisdiction of the probates.

In testimony whereof, I have hereunto fixed my name and seal, this fourteenth day of June, eighteen hundred and eleven.

Interlined before sealing, the words "of Mobile," after the name of Nicholas Cook. The above is my last request.

In presence of— JOSEPH COLLINS, [SEAL].

E. LEWIS,
her
MARGARET × FAYER,
mark
BENJAMIN GOODWIN,
his
JEAN B. × BANDRO.
mark
Mark ordinance.

Recorded 28 August, 1813. **WILLIAM HOWELL.**

Inventory of Personal Estate and Appraisement of Joseph Collins, deceased, of Pascagoula, to wit:—

1 lot surveying instruments, containing a compass, chain, Jarod staff, painting instruments, small case of pencils, paints and brushes for painting, estimated together at	$50 00
1 level,	2 00
1 military hat,	5 00
1 spy-glass,	25
1 sword and belt,	20 00
1 dressing case, 2 razors, and 1 hone,	1 50
1 Gibson's Surveying,	1 25
1 Peck's Evidence, Gradon's Digest, Navigation, Blunt's New Practical Navigation Laws, Survey, Barrett's Dictionary, Miller's Guide, Treatise on Artillery, Waxton Catalogue,	8 00
1 virge old watch, out of repair,	2 00
1 book maps, estimated together,	1 00
1 trunk,	0 00

Recorded 28th August, 1813.

WILLIAM HOWELL, *Clerk.*

MISSISSIPPI TERRITORY,
Jackson County.

We, James Ware, Jean B. Bandro, George Farragut, having been sworn agreeably to law to appraise the personal estate of Joseph Collins (deceased), have appraised the same agreeably to law, to the above-estimated inventory.

Given under our hands and seals, this fourth October, 1813.

JAMES WARE,
GEORGE FARRAGUT,
his
JOHN B. × BANDRO.
mark

Recorded the 4th of October, 1813.

WILLIAM HOWELL, *Clerk.*

PASCAGOULA, *West Florida.*

Memorandum of my property, out of which my executors are to pay my just debts, and apply the overplus to the legacies, according to my will of the 12th instant. In the summer of 1798, I put into the hands of Nicholas Gonanur, of New York, a bond for 1200 dollars to collect of Samuel Sargeant, of Carrason. There is some land, the quantity not recollected, which I improved in company, or jointly, with Colonel Drury McNair, of Pittsburg, laying near Presquit, near Lake Erie, supposed to be about 4000 acres to my share, which will better appear by agreement with Thomas Hutchins (for him to dispose thereof), dated in the year 1810. One half of the

tract of land and the saw-mill on Fish River, owned jointly by myself and Pauton, Leslie & Co., which will appear by articles of agreement between myself and John Forbes for them, for which William Forbes offered me $2500, when the mill was at work, for my half. There is an attachment in the hands of General Adair for a bill (of) 2666 dollars, as also interest and protested damages, which was accepted by Wheeling & Miller, of Philadelphia; and the amount attached in the hands of Andrew Holmes, merchant, Lexington, Kentucky, which will appear among the papers, more fully, in the agreement with General John Adair. When recovered, there is upwards of 2200 dollars to be paid to John Hair, merchant, of Port Pierre, in 1798 say. I think it's about $2240, which will better appear by his account current among my papers.

There is a tract of land at Mobile Point, of 36 acres front, and planted it in cotton and corn. I built a house with four rooms, and other outhouses.

In the town of Mobile one large lot fronting on the river 34 perches, and Royal Street the same, and in depth thirty perches, as will appear by papers in my possession.

There is also ten acres in the vicinity of Mobile, for which I have Doctor William E. *E.* Kennedy's obligation to convey as will more fully appear by his obligation to convey as will more fully appear by his obligation dated 22d November, 1806; also an equal half of 800 acres lying on the south side of Portage Creek, about three miles from Mobile, which will more fully appear by Doctor William E. *E.* Kennedy's conveyance, *dated conveyance*, dated 26th November, 1806.

There is 800 acres on the east side of Pascagoula, which I bought from Simon Cumbert, near Mills. There is also 800 acres which I bought from Madam Joseph Krebs, on the east side of the river, where her old cowpen was, and known by the name of Little Bluff.

There is a tract of land surveyed by John Lynde including both sides of Pascagoula, about Cedar Creek, for which I have his obligation for one-half, as also the agreement of John Forbes & Co., who was interested with Mr. Lynde, and will appear by the agreement signed by Mr. Lynde, John Forbes & Co., and Mr. Simpson. There is on Pearl River a large tract conveyed to me, which will appear by the deed of conveyance among my papers, lying on the east side above Tavres, according to a warrant of survey dated in 1794, Diego McVoy's obligation dated 4th May, 1808, for one-fourth of a tract of land of about 800 acres, lying between Favre and Tontanelle, about half a mile south of Mobile Fort, and fronting on the river. I have due me from the King of Spain my pay from the 10th June, 1804, until first of April, 1810, at the rate of 62 dollars per month, as will appear by the vouchers in my trunk left in the hands of John Lynne, Esq., Notary Public, New Orleans, exclusive of my perquisites as Commandant of Pascagoula during

three years and eleven months of said time. Done at this place 14th 1811. JOS. COLLINS.

Note.—Mr. Aubin De la Forest holds two of my notes, one for $200, another for $99, also another account and note for 70\frac{50}{100}$. The latter has been paid, which will appear by Mr. Nicholet's order and his son's receipt, and when the said De la Forest presents the two first mentioned notes, they are just, and must be paid, but on condition that he pays my deposit fees for the estate of Nicholet, at 5 per cent. on $9000, and $108, which I disbursed for provisions and other expenses, while under my charge as depositor.

THE STATE OF MISSISSIPPI,
Jackson County.

I, Samuel Davis, Clerk of the Probate Court in and for the County of Jackson, and State aforesaid, do hereby certify that the foregoing is a true and correct copy of the will of Joseph Collins, deceased, and the probate thereof. And also the inventory and appraisement of the personal property, and a memorandum of the real estate, &c., of the said Joseph Collins, deceased, together with the proceedings of the Court of Jackson County, at the time the said will of Joseph Collins was admitted to probate and record, as the same appears of record in my office.

Witness my hand and seal of office, this twenty-third day of May, A. D. one thousand eight hundred and fifty-four.

[L. S.] SAMUEL DAVIS, *Clerk P. C. J. C.*

STATE OF MISSISSIPPI,
Jackson County.

I, John Fairley, Presiding Judge of the Probate Court for the County of Jackson, and State of Mississippi, do hereby certify that Samuel Davis, whose certificate appears above at the date thereof, was, and now is, Clerk of the said Court, and that his certificate and attestation are in due form.

Witness my hand and seal this 25th day of May, A. D. 1844.

JOHN FAIRLEY, [SEAL.]
J. P.

Agreement signed on the trial by solicitors of the parties, viz:—

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

In Equity. Circuit Court of the United States, 5th Judicial Circuit, Southern District of Alabama.

It is agreed by the parties in this cause, that each party on the hearing may offer and read in evidence such parts of the printed record in the suit of Sidney E. Collins *vs.* The Heirs and Executors of Joshua Kennedy, heretofore decided in this Court, as he deems

applicable, subject to all just exceptions. The said parts of the said record to be specified in writing, and made a part of this record.

CHANDLER, SMITH & HERNDON.
Sol's for Deft's.

K. B. SEWALL, *for Compl't.*

Filed 2d May, 1857. GEO. E. HOLT, *Clerk.*

Note. Here on the trial the complainant rested his evidence, with leave to introduce testimony in rebuttal.

Defendant's Testimony.

No. 1. *Bond from Cleveland to Kennedy and the endorsements thereon.*

STATE OF ALABAMA,
City and County of Mobile.

Know all men by these presents, that I, William F. Cleveland, of the said State, city and county of Mobile, am held and firmly bound to Joshua Kennedy of the same place in the sum—forty thousand dollars money of the United States, to be paid to the said Joshua Kennedy, his executors, administrators, or assigns, to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, dated the tenth day of October, A. D. one thousand eight hundred and thirty-three.

The condition of the above obligation is such, that whereas the said Joshua Kennedy has by deed of sale bearing even date with this covenant, agreement and bond, conveyed to the said William F. Cleveland, twenty acres $\frac{02}{100}$ of an acre of land, lying and being in the incorporate limits of the city of Mobile, bounded southerly by the new road leading from the northwest angle of St. Louis and Jackson Streets to Three Mile Creek, westerly by the Bayou Marmott, and as the same is particularly described in the said deed of conveyance. 1st. In consideration of the said twenty $\frac{02}{100}$ acres of land, described and conveyed by the said deed of sale as aforesaid. The said William F. Cleveland for himself, his heirs, executors, and administrators, covenant, grant, and agree to and with the said Joshua Kennedy, that he will proceed to have the said twenty $\frac{02}{100}$ acres of land cleared and laid off in lots, in such manner as he the said William F. Cleveland may think most advantageous, and to sell and dispose of such lots, parts, or proportions of the said land described as aforesaid, as he the said William F. Cleveland may think fit and proper to raise and make the sum of two hundred dollars for each acre of the said twenty $\frac{02}{100}$ acres (to wit), four thousand dollars, which sum when so acquired the said William F. Cleveland, for himself, his heirs and executors, covenant, promise and agree to pay to the said Joshua Kennedy, or to his heirs, &c.

2d. On the payment of the four thousand dollars above specified, then in consideration of the said sum of four thousand dollars being paid as aforesaid, the whole remaining lots, parts and proportions of

the said described twenty $\frac{02}{100}$ acres of land to be a joint and equal property between the two contracting parties (that is to say), the said William F. Cleveland, his heirs, executors, &c., is to have and be entitled to one undivided half of the said remaining lots, parts and proportions of the said twenty $\frac{02}{100}$ acres, and the said Joshua Kennedy, his heirs, &c., is to have and be entitled to one undivided half of the said remaining lots, parts and proportions of the said twenty $\frac{02}{100}$ acres, notwithstanding the legal title of the said twenty $\frac{02}{100}$ acres of land is to be and remain in the name of the said William F. Cleveland, the said Joshua Kennedy, his heirs, &c., is to have, and is the equitable owner of the one undivided half or moiety of the said remaining lots, parts, and proportions of the said twenty $\frac{02}{100}$ acres, to be and remain a joint property belonging equally to the two contracting parties, subject to equal proportions of the expenses, and equal proportions of the benefits and profits to be equally paid and received by the said contracting parties. And that William F. Cleveland, on condition he is requested, promises and agrees to exhibit or render a statement of the sales and expenses of the said remaining lots, parts and proportions of the said twenty $\frac{02}{100}$ acres to the said Joshua Kennedy, his heirs, &c., and to sell and dispose of the same to the best advantage whenever the two contracting parties may think fit for their benefit to do so. Now if the above and foregoing bound William F. Cleveland, his heirs, executors and administrators, do and shall in all things well and truly observe, perform, fulfil, accomplish, pay, and keep all and singular the covenants, grants, articles, clauses, provisos, payments, conditions and agreements whatsoever, which on the part and behalf of the said William F. Cleveland, his heirs, executors and administrators, are or ought to be observed, performed or fulfilled, accomplished, paid and kept, comprised or mentioned in the foregoing obligation, and embraced on this sheet of paper, written and made, or mentioned to be made between the said William F. Cleveland of the one part, and the above named Joshua Kennedy of the other part, according to the purport, true intent and meaning of the same, then this obligation to be void, otherwise to be and remain in full force and virtue.

In witness whereof, the said William F. Cleveland has hereunto set his hand and seal at the city and county of Mobile, in the State of Alabama aforesaid, the tenth day of October, in the year of our Lord one thousand eight hundred and thirty-three.

W. F. CLEVELAND, [SEAL.]

Signed, sealed, and delivered in the presence of
GEORGE HUGGINS,
WM. KITCHEN.

Endorsements.

Received of Capt. William Cleveland fifteen promissory notes endorsed by him, amounting to fifteen thousand six hundred and forty-two dollars $\frac{00}{100}$, on the within bond or obligation.

Mobile, the 11th day of July, 1835. JOSHUA KENNEDY.

As a part of the agreement in the settlement with Mr. Hallett, of the case of Collins *vs.* Hallett and Walker, executors of Kennedy, *et al.*, in the U. S. C. Court, it was agreed that this bond should be surrendered for cancellation. J. A. CAMPBELL.

(Written in pencil). "Cancelled, Mobile, May, 1851."

(Copy of paper attached to the said Bond). Endorsed "notes rec'd of Cleveland." CLAUDIUS B. CHURCHILL.

Mobile, 12 March, 1835, at two years after date.

Churchill,	$918 66 p'd.		
do.	1,022 67		
do.	970 67		
	2,912 00		$2,912
Wm. McGee,	1,140 00	Part paid and property	
do.	1,200 00	reconveyed to Joshua	
do.	1,090 00	Kennedy.	
	3,430 00		3,430
Collin & Collery,	1,272 00 p'd.		
do.	1,416 00		
do.	1,344 00		
	4,032 00		4,032
J. W. Tisdale,	1,241 00		
do.	1,778 00		
do.	1,126 00 p'd.		4,145
			14,519
J. A. Stewart,	353 33 p'd.		
do.	373 33		
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See objections page 1696, after the defendants' testimony.

No. 2. Deposition of Hon. John A. Campbell.

The deposition of John A. Campbell, a witness on the part of the defendants in the said cause, taken by interrogatories and commission, the said witness being duly sworn, in answer to the direct and cross-interrogatories, deposes and says as follows, to wit:—

Direct Interrogatories to the said witness and his answers thereto.

Direct int. 1st. Are you acquainted with the parties to this suit, and the object of the bill of plaintiff?

Ans. I am acquainted with the parties to this suit, and have read the bill and portions of the other pleadings in the case.

2d. State when, and under what circumstances did the firm of Campbell and Chandler become connected as counsel in the suit of Sidney E. Collins *vs.* The Heirs and Executors of Joshua Kennedy, dec'd, which was prosecuted in this Court, and is referred to in the bill. State what information you have of the rights of any of the parties concerned in the suit when the bill was filed, and upon what information the averments to the bill were made.

Answer. In February or March, 1844, Drury Thompson placed on my table a bundle of papers which he desired me to examine, and said that he would call at another time and converse with me respecting their contents. These papers related to the claim of the father of the plaintiff (Joseph Collins), to parts of the Dubroca and Alexander Baudain tracts of land in Mobile County, and conveyances of the plaintiff to him, and other papers between them. He came subsequently and opened a negotiation for the services of my firm in conducting suits for them, and offered me one-fourth part of the land to be recovered. I stated to him I could not make a contract of that kind, and he changed the offer to $25,000, rating the Baudain tract at from $80,000 to $100,000, and the other at from $20,000 to $25,000. I told him I would consider the subject. He came several times for an answer before I had done so, and to one of his applications, I answered impatiently, I would not examine his case till he had paid me $1000. This he did the next day (I think); this was the latter part of March, 1844. I afterwards examined the case. At the time I set upon the examination, I had no information of any interest in the cause except that of Drury Thompson. He communicated nothing in regard to any other interest, nor did any other interest appear upon the papers submitted to me. Before the bill was filed, Thompson in reply to some inquiries concerning the family of the plaintiff, stated that Primrose had conversed more fully with Mrs. Lanier, the mother of Collins, than he had done, and that he would come or bring him to me. I cannot answer positively, but my impression is, that this was the first distinct notice I had of the connection of Primrose with the suit. I asked Thompson if he had an interest, and his reply was in the affirmative, and to the further question, if there were any others, he answered Mr. Cleveland. Primrose professed to have had a minute and particular conversation with Mrs. Lanier, and mentioned circumstances to show that he had. He mentioned a number of immaterial births of children between the birth of George and the plaintiff, and gave as his authority some member of the family, generally Mrs. Lanier, for all he said. He stated that the plaintiff had been in Texas one or two years, and

was not a citizen of Texas, and had gone thither from some point one hundred miles or upwards north of Van Buren, in Arkansas.

I looked at a map hanging over my table in the office, and told him the place he described was in Missouri. He said it was probably Missouri, and that I had better say Missouri. I know of nothing to make this averment a matter of concern, nor any reason why the truth should not have been told, and I did not doubt the statement. The material matter of inquiry was the age of the plaintiff, and upon that he was direct and positive, citing the authority of the mother. Every positive statement in that bill relative to the plaintiff or his family had the sanction of Primrose as matter of fact, direct from intercourse with the mother, stepfather, or the plaintiff, and where the statement is not positive, the averment was made according to his notion of the probability. After the bill was finished I found the statements meagre and unsatisfactory, and proposed to defer filing the bill until a fuller and more complete account could be obtained from Collins. But he assured me of the exactness of his information, and that, if a delay occurred, Col. Hallett would have left the city for the north, and a delay of a year would probably be occasioned. The allegations of infancy and citizenship of the plaintiff were the subject of much comment by the defendants at the trial, and which were the source of vexation to me and of complaint, on my part, and the facts are very distinctly in my recollection. It may be a proper reply to this question to state the impressions on which the case was undertaken, and the contract with Thompson in regard to it. The will of Joseph Collins indicated that he did not regard his connection with the mother of the plaintiff as a lawful connection, and there was no evidence in the records of the church of the marriage, or the baptism of the children *of the children* of the connection as legitimate, and it was understood that the reputation of the neighborhood was divided as to the fact. The testimony subsequently obtained from Mrs. Murphy and Gov. White, I was not then informed of. I placed but little confidence in the claim of the plaintiff as an heir at law in the early stages of the case. To obtain a standing in court I relied upon the will, which, though invalid as a Spanish will, I thought was made legal by the probate under the laws of the Mississippi territory, of which territory Mobile County was a part. But without a marriage between the father and mother of the plaintiff, he was not the heir either of George or Joseph; certainly not of Joseph, and almost as certain in regard to George. My strong impression is, I would not have taken the case but for the assurance the difficulties in regard to the deed executed by the plaintiff to William Kitchen would be obviated by the proof of his minority. The inquiries made by me into the family history of the Collins', and the effect of the facts of that history on this title, were made for the first time in March or April, 1844. The effect and validity of the conveyances of George and Sidney Collins to William Kitchen, and the conveyance of James Innerarity to Kitchen was first examined at that time.

In the case of William E. Kennedy's Heirs *vs.* Joshua Kennedy, I had looked at the deeds of 1820, from Wm. E. Kennedy, to consider whether he was divested of the title, and whether that property remained as his and passed to Joshua Kennedy by the trust deed of 1824, and I had also addressed a question to Samuel Kitchen, a grantee of one of the deeds and a witness, the object of which was to elicit testimony, which might show that the consideration of his deed was unconnected with a debt claimed by Maxfield Kennedy of William E. Kennedy, and which, he testified, Joshua Kennedy had assumed in 1820, in consideration of a conveyance of lands made at that time. I had also debated the Price title in a number of cases. The proof of a marriage, in fact, between Joseph Collins and Elizabeth Wilson, the decision of the Supreme Court of Louisiana in 1846 upon the operation of the Council of Trent in Louisiana, and an examination of the European continental authorities upon them in that year, gave me more confidence in the title of the plaintiff as heir, while the proof of the majority of the plaintiff when he made his deed to William Kitchen, deprived his particular case of much of the superiority it had over that derived from George Collins. My explanations to Thompson upon the difficulties of the case were full. I informed him of the fact that the suit must be carried on in the name of Collins, of the disfavor with which speculative suits were held, and that I would not bring this unless Collins was a plaintiff, substantially interested in the property to be recovered; and I told him of the importance of the plaintiff's presence to the successful issue of it. He asked me what would be the effect of carrying on the suit in the name of Collins? I told him Collins could dismiss it at his pleasure, and release his claim to the defendants, and he could not prevent him. I also pointed out objections to the personal character and reputation of Primrose, and that any assertion of ownership or title by him, or control of the suit, would be pernicious, and that the suit must be conducted as the suit of Collins, and that he should have a real as well as ostensible connection with it. I also told him if there should be a full recovery, it was not right that the plaintiff should not share in it. These occurrences took place before the bill was filed. The first pecuniary offer of Thompson in respect to the fee was modified by the abatement of $5000, when I concluded not to sue for the Dubroca tract. Thompson fixed these sums without any suggestion from me, nor was there any objection ever made on account of them. The fee depended upon the recovery of the land. The land was the only subject of consideration, and the service was limited to the courts of Alabama.

Int. 3d. State when your acquaintance with the plaintiff in that suit was commenced, the nature of your intercourse with him, and the degree of his participation in the conduct and management of the case, and his means of acquiring information of all related to it, or comprised in the suit at its various stages.

Ans'r. Shortly after my return from the Supreme Court, in Janu-

ary, 1845, Drury Thompson informed me he had been to Texas, and had arranged with plaintiff to come to Mobile to stay during the taking of the testimony in the case. He informed me of his purpose to see him, and make that arrangement with him some time before, and it was in accordance with suggestions made while the case was under consideration in the spring of 1844. Plaintiff in fact came in February, 1845, with Col. Platt, an agent of the defendants. My intercourse with him, as far as I know and believe, was similar to that I used towards every client under like circumstances. I gave him information of the state of his case, and conversed with him in reference to what was necessary to be done to its successful prosecution. I did not make a guest or companion of him, but thought favorably of him, and dealt kindly towards him. In all my intercourse with him, with Thompson, with Primrose, and with every other one, I spoke of him as a party in the suit, and never felt otherwise than that he was entitled to a substantial portion of the property to be recovered. He participated in the examination of witnesses as far as it was suitable. He was present at one of the examinations to my knowledge, and perhaps to others, I did not attend, for I attended but few. He visited several of the witnesses to learn their recollections of the facts, I think Mrs. Lewis, Mr. Kreb, a relative of Wm. Moore, and others. He was present in court at the reading of the testimony and at the argument, and when the decree was delivered. I think he spent one-fourth or more of the time from February, 1845, till April, 1847, when the decree was given at Mobile to show that he was the plaintiff in the cause. My brief was sent to him in 1850. I gave him my written and favorable opinion on the claim of Mrs. Lanier's children about that year, and wrote him in reply to all his letters. I was not a party to any correspondence between him and others, nor did I see their letters, but have reason to believe that Thompson corresponded freely with him. I sent him the copy of the record I had used in the Supreme Court in 1851 (which he kept), and I think also a copy of Col. Aiken's brief. My own observation and belief is, that Thompson and Col. Platt had informed him of all that was to be known of the suit, and of the common gossip of the defendants and their friends, before his arrival in Mobile. He identified himself with the case, and was anxious (as I understood) to prove his minority when he made the deed to Kitchen, and sought Mrs. Lewis, and promised to bring the family Bible for that purpose. He never found fault, to my knowledge, with any averment of the bill, or any act or proceeding in the case.

Int. 4th. State all that was communicated to you, or which you collected in conversation with the parties interested in the suit of their respective rights before the decree of the Supreme Court, in December, 1850. Describe the circumstances, and conversations, and acts connected with the preparation of the deeds in January, 1849, between the plaintiff and Drury Thompson.

Answer. I collected from conversations with Thompson and Prim-

rose, prior to 1849, that Primrose, Cleveland, and Campbell were interested with Thompson. This was current conversation among those who spoke to me of the case, and their names were mentioned in the argument here, before Judge Crawford, and I think by Col. Aiken, in his printed brief in the Supreme Court. The proportions of their interest I was not informed of till a later period. I recollect that one of Primrose's creditors asked me the direct question in reference to his interest, in order to decide upon a proposal from him, and that I could give him no information upon that subject; and I never had a conversation with any of them before 1849, which afforded me more specific information than I have given.

In January, 1849, the plaintiff came to my office, and explained his views upon the subject of a division between Thompson and himself. He spoke in affectionate and grateful language of Thompson, and his wish that they should be as brothers, and suggested that he considered it to be proper that the property should be equally divided. I told him what had occurred between Thompson and myself when the case was commenced, relative to him and his interest, and that I thought that his claims had been enlarged by his attendance in Mobile, and the advantage the case had derived from that fact. And he having stated that there had been no particular understanding between Thompson and himself on the subject, and that he could not inform me of Thompson's views, I recommended him to have a full and free conversation with him. In this conversation distinct reference was made by both to the Texas deeds. Their authority was not impugned by either. But as I understood him, and as I expressed myself, a modification of the contract originally made was deemed to be right and proper, by both him and myself. The reason that he gave me for claiming a settlement was, that he had no evidence from Thompson of any right or interest, and that if anything happened to him, his family would have none, and be thereby exposed to injury. I had never heard of any discussion among these parties on this subject before, and did not know the particular views of any of them. Within two or three days the plaintiff and Thompson came to my office in the evening, requesting me to draw a paper expressing the sentiment of Collins, which was then repeated. I did not draw the paper then, but required to see the Texas deeds before doing so.

Probably the next day I prepared and handed to Thompson drafts from which the papers attached to *this* answer were subsequently made up, and bear date 13th January, 1849. I was not present at the execution of these. The plaintiff and Thompson brought them to my office, shortly after their execution, and I probably looked over them. Thompson had said in the former interview that as Collins was to have a part of the property, he wished him to give me an obligation to pay my fee, to which I replied, that would be provided for in their agreement. At this time he handed me an acknowledgment of Collins, executed like the other papers, and proposed to me

to prepare one for Mr. Sergeant. This I told him was not necessary. He likewise stated that he should expect indulgence upon the amount to be paid to either of us. I think after Thompson left the office, Collins stated that he (Thompson) had declined to surrender the Texas deeds. I do not recollect that his complaint extended to a refusal to give him a duplicate of the agreement. I asked him, however, the reason he assigned. He mentioned no reason, but enumerated, so as to leave some misgiving, that Thompson was dealing capriciously, or that possibly his refusal had more significance.

A day or two after, Thompson came to my office upon some of his official business, and I asked him the question direct, why it was that he declined to give Collins these papers? His answer was clear and unhesitating, that he was between two fires, that Collins demanded another arrangement, and that he had given obligations to the persons connected with them, and he should be entrapped if he did so, and he thought his best way was to keep all the papers, until the end of the suit, when he could act fairly by all. This was the first conversation that I had with Thompson during the pendency of this negotiation apart from Collins, and this was its entire import. I had none with either of the other parties, but had supposed that the negotiations were going on with the concurrence of all.

Collins came afterwards, and mentioned that Thompson still declined to give those papers. Conveying still the impression, that no explanation had been given to him, I told him that I believed the reason was, that Thompson had given obligations to other persons, who had an interest in the Texas deeds, and he was apprehensive that if he gave them up, he would be exposed to complaints and difficulties with them, and that he concluded to hold all the papers to the end of the suit, when there would be a full settlement. He then recurred to his original desire and apprehension. He said that he had no evidence of any title, and that his family would be exposed in case of his death, to wrong or injury for the want of it. I told him that Thompson could not get possession of the property except through his suit, that the suit was under his control, and that he, Thompson, could always be compelled to produce the papers. He left me after this conversation. He expressed no more dissatisfaction than I have recounted, and appeared to me to be content, and within a few days thereafter returned to Texas. There is no impression more distinct in my mind, than that the plaintiff understood the allusion made to the persons interested, and that he acquiesced in the conclusion on the part of Thompson to hold the deeds till the settlement spoken of was made. I carried the impression into the subsequent proceedings between the parties, and never supposed that there was any question about it during all the period of my intercourse with the parties. It is proper to state, that I did not question Thompson at any particular request of Collins, nor did I return the answer as the answer of Thompson. I have had no conversation with any of these parties since, relative to these negotiations, and I

believe the testimony I have given contains a full account of what then took place.

Int. 5. Describe all the negotiations and circumstances connected with the settlement completed by these parties the eighteenth February, eighteen hundred and fifty-one, and state all the facts that will show that the plaintiff received that settlement with satisfaction.

Answer. The suit was decided in December, 1850, and the opinion of the Supreme Court was received here in January, 1851, and shortly after its receipt published in pamphlet form. The parties here during that month, as I learned from some of them, as well as from other persons, had some bickerings and perhaps quarrels, arising from their jealousy and distrust of Thompson. My recollection is, that in anticipation of the arrival of Collins, within two or three days, Cleveland spoke to me on the subject, and asked me if I was willing to appoint some evening during which the parties would come to my office, and talk over the whole subject, and that I appointed an evening of the following week for that purpose. This is the recollection I recalled in 1854, after I had received a letter from the plaintiff, dated "Citronelle," which is attached to this deposition, and I do not know of anything to disturb the impression. The particular circumstances of the appointment were not of a nature to make a deep impression, and I do not state them with unlimited confidence. I give my best impressions.

I appointed a meeting, as desired by Cleveland, for the object specified, and my intercourse with him did not go beyond what I have stated. The five persons, plaintiff, defendants and Primrose, met at my office on the evening appointed, about the same time, and had some conversation until I was ready to engage in their business. After some reference to the subject, and interchange of views, Mr. James Campbell stated that he was willing to abide by my opinion on the subject of his share, and the others indicated that I should make some suggestions to direct them. In answer to this, I suggested a division of the property to be acquired, into six parts, and that two should be assigned to the plaintiff. James Campbell stated that he was satisfied, that he regretted having been concerned with the subject, and was only desirous to have the matter settled. Primrose declared that he was not satisfied with the proposal. He contested the claim of the plaintiff to so large an interest, that his title was good for nothing, and that the success in the cause was due to the ability with which the suit was prosecuted. He stated, that he had rendered more service than any, but the firm of Campbell & Chandler; that I had refused to take the suit, and that he could get none to take it; that Collins did not expect such a share; that he had said all he wanted was a few negroes and some cattle.

I took pains to answer these objections by repelling the disparaging remarks upon the title, and declaring that I had prosecuted the suit, believing the title a good one, and my exertions in the cause were due to that conviction. I put the inquiry as to their estimate of the

value of the property, to which Thompson replied $200,000. I said that it was rated at $80,000 or $100,000, when the suit was brought; that each of them would get more than was then contemplated by any, and more than our firm, whose services were acknowledged to be superior to the others, if that was to be a test. Thompson repeated the sentiment, that he had always said that he was willing to act fairly by all the parties, and was prepared to do so, but gave no definite assent to the proposition. Collins expressed himself in the same general terms. The conversation passed from this to the other subjects connected with the case, and then the parties left. I told them at parting to take into consideration what had been said, and if I could be of service, they could come to my office. There was no agreement made on the evening in question between the parties. No paper was then drawn by me for the parties, or either of them. There was no representation made by me as to the value of the property, but my remarks respecting the value were based upon the answer of Thompson, that the property was worth $200,000, and that was the only representation made in regard to the value. The deed of February, 1851, except the covenant in regard to dower, was prepared by me at my office on a subsequent day—I cannot say how many days after, but the impression is, of several. I did not learn of its execution till the week following that in which it was prepared. It was prepared in consequence of a message left at my office for me to do so. I wrote a rough copy, and gave it to James A. Campbell, a student at law in my office, to prepare three copies from it, suitable for execution, and to deliver them to the parties when called for. I have seen two of these copies as executed by the parties, in his handwriting, and one of them contains the interlineation of the word "of" by me, and this was probably his first draught, which he submitted to me, for on the other this word is in the draught in his handwriting. I do not remember to have had any conversation with the plaintiff or defendants, between the meeting and the preparation of the deeds, nor do I remember any conversation with the plaintiff between the day of his arrival and the meeting at my office, though I do not doubt that I both saw and conversed with him, and there is no reason why I should not have informed him of the appointment and the reasons for it. I simply state, I do not remember such an incident. I have no reason to doubt the satisfaction of the plaintiff with the settlement.

Such was my information at the time. His conduct to me expressed it, as strongly as any words could have done, and the subsequent conduct with the parties. This deed was drawn nearly seven years after the suit was commenced, and about six years from my first acquaintance with the plaintiff.

Int. 6th. State all the facts and circumstances which occurred between that settlement in February, 1851, between said parties plaintiff and defendants, and the heirs and executors of Joshua Kennedy, deceased.

Describe the preliminary discussions in the office of Campbell and Chandler before a settlement, the points of disagreement, and the ultimate conclusion. Include in your evidence whatever letters, writings or communications that will explain the transactions and the views of the parties.

You will annex all the letters addressed to you by complainant, or delivered to you by him concerning the matters involved in this case. You will also state the contents of any letter you may have written the plaintiff concerning this case, during its pendency in the Circuit and Supreme Court.

Answer. The four parties, Thompson, Collins, Cleveland, and Primrose, met at my office frequently during the latter part of February, in March, and the early part of February, 1851, in reference to the further prosecution of the cause. Shortly after the decision was made in Washington, Col. Hallett expressed his disposition to stop further expense and litigation, and to surrender the property. This was one reason that made a settlement of the rights among the parties necessary. The probability is that the subject of the account was spoken of, and that the parties, from some conversation at my office, then undertook to make it up. They brought me accounts which were very extravagant and exaggerated, but which they insisted should be prosecuted. I gave them my views upon the subject, and the letters I have attached to my deposition, dated 25th February, 1851, signed by the plaintiff, and otherwise in the handwriting of the defendant, Thompson, and the letter of the 26th February, 1851, from Wm. D. Primrose to the plaintiff, also attached, was probably a consequence of them. These letters were, I think, delivered to me the same day by the plaintiff, at my office. I rebuked the tone and spirit of the letter of Primrose to the plaintiff, and stated to him that he, Primrose, had no ground for assuming the overbearing tone towards him that he displayed in that letter, nor had he any right to intrude his individual concerns in the settlement, and that the claim for rents and profits was exaggerated, and would lead to a protracted litigation. In these interviews, it was acknowledged that my professional contract was fulfilled by a recovery of the land, and the distinct offer was made to me of $5,000, to prosecute the accounts, and this I refused, and told them they were at liberty to get other counsel. In the course of the discussion, I received from Col. Hallett a letter, containing a statement of his receipts and disbursements on account of this property, during the whole period of his management, which was communicated to the parties. And this statement was a conclusive answer to the imaginary values they had made up into an account. It showed that there could not be a large balance either way. I have not been able to find the statement of Col. Hallett, though search has been made for it in my former office, and I do not know where it is, and suppose it to have been destroyed or lost. The subject was under consideration till the 10th or 15th of April, during a part of which time I was absent at Montgomery, and

about that time four of the parties authorized me to submit the proposal I had all the time supported. I did this, stating to Col. Hallett that it could not be altered in any particular, and it was accepted as submitted, and as embodied in the decree of April, 1851. No interest was charged on the $10,000, because the payments to George and Sidney Collins, and to Innerarity, by Joshua Kennedy, with interest, nearly, if not quite, balanced the interest account. It was after the departure of the plaintiff from Mobile, and after the settlement of the decree, that the quarrel arose between Thompson and myself, as referred to in the bill. I believed that Primrose and Thompson had determined to break the engagement they had made through me, with a view to return to the objects they had deliberately abandoned, and I told them of my disgust at their conduct in plain terms, and that they might bear the responsibility of such conduct. I placed the decree in the Court, that they might move for its rejection, and state their reasons to that tribunal. This they would not do. The lot, at the time it was acquired by Joshua Kennedy, was a marsh for several hundred feet from the river. No portion of the Collins lot proper yielded profits of any consequence. The profits arose entirely from the costly and permanent improvements of Joshua Kennedy, by which that lot had been filled up and extended. I questioned if the profits upon the improvements could be recovered, and if so, whether interest could be charged upon them, and no allowances were made for taxes, assessments, &c., to Joshua Kennedy, and rents were charged, I think, for the property sold and improved by Campbell and Cleveland, and the Campbell property was not in the title. No desire in regard to defining a boundary has been suggested before this. The pretext of Thompson and Primrose for the rejection of the decree was that the northern line did not embrace the property they hoped to get. The line, as stated by them, did not conform to my expectation. I supposed that the south half of the Baudain tract included all the land south of St. Anthony, but that expectation could not enlarge the property comprehended in the claim and decree. It was fully understood that no part of the south half of the Baudain tract, except on the western end, was north of St. Anthony Street, according to either of the lines, and my impression is, that the superficial contents of the part north of St. Anthony street, added to the contents of that street, exceeded the land south, according to either. My clients insisted upon rejecting the decree, and the lines of the title. A few days after the decree was entered, Primrose came to me, and stated that the course of conduct of Thompson was disapproved by the others; that they had never agreed to his views, and urged me to submit another proposal to Col. Hallett, for the acquisition of the lot south of St. Anthony Street; I did so upon his appeal; that I ought not to suffer Thompson's behavior to affect my feelings in regard to Collins, who was absent, and those who were present, and who agreed to the propriety of my views, and the letters I have referred to from Col. Hallett to myself, and from

Primrose to myself, were the fruit of that proposal. Pending this negotiation, the case of Doe *ex dem.* Hallett and Walker *vs.* Magee, reported in Vol. 22, Ala. R. 699, was tried in the Circuit Court of Mobile County, and the line marked on the map of the report, from the point C to the river, was established as the boundary between the Baudain and Orange Grove tracts, as far as it could be by such a suit. Under this verdict, the line of the Collins' half certainly comprised all the land south of St. Anthony Street. It was on the assumption that this verdict ascertained the true line, and that the instructions of the Circuit Judge were correct (as I was afterwards informed), that the subsequent settlement was made between the parties in interest and the representatives of Kennedy. I had no part whatever in that settlement, nor in any negotiation for a boundary, except as before stated.

I went to Montgomery about the 23d May to attend the District Court of the United States, and remained for nearly the whole of June in attendance on the Supreme Court. I attach to my answer all the letters of plaintiff to my firm or to myself during my connection with this cause, that I have or know of. I attach all the letters to myself personally since 1853. I attach the letters of Wm. D. Primrose to illustrate his agency and connection with the cause and his feelings in regard to the settlement. Those letters to Wm. F. Cleveland were never seen by me, until long after this suit was brought, and are derived from the solicitors for the defendants, nor was I aware of the existence of the feelings they indicate.

I have not kept copies of letters to the plaintiff (but one in 1855). The letters I wrote to him were generally in answer to his; and I do not doubt correspond with what is herein contained.

Int. 7th. Explain fully and particularly all the matters connected with certain alley-ways which bound a lot, at the northeast corner of St. Louis and Water Streets, in which you had an interest, in so far as connected with this suit, or your interviews with them, and any fact in your knowledge to show that these parties were entirely content with all the acts and proceedings of the firm of Campbell & Chandler, and both of its members, through the whole of the suit.

Answer. In the spring of 1849 I was at the sale of the real property of the State Bank in this city. I went there without any previous intention to buy any property. While there the property mentioned was offered, and cried by the auctioneer for a long time at about $8,000. Mr. Waring, who was near me, mentioned that the price was low, and that he would inquire into the state of the improvements of Mr. Cleveland, who was at some distance. He had a satisfactory answer, and returned, and then proposed to me to join him in the purchase, to which I assented. My ⅓ share cost $3,533 33⅓ cash, and three instalments of $883 33 and interest. The property went into the sole charge of Mr. Waring, and remained in his care until the summer of 1851. In the winter of 1849–50, I heard of these alley-ways, and made some inquiries concerning them, in con-

sequence of a dispute Waring had with one of the Kennedy family, and had a street conversation with Campbell and Cleveland at that time. I had no other conversation with any other of these parties except Primrose, and that conversation was after the execution of the deed of the heirs of Kennedy to Collins, in consequence of the settlement of July, 1851. I made no written communication but one to the parties. I wrote that from impressions derived from Waring and Primrose. The matter was adjusted immediately after, and without further discussion or explanations by my clients. The suggestion to reduce the alley-way was a concession of Waring at my suggestion and counsel. I have no doubt if I had spoken to either of the other parties in interest, there would not have been any difficulty. At the time that I wrote a letter to all the parties, my interest in that and another parcel held with Mr. Waring, was under an offer of sale to him, which he had either accepted, or had signified his intention to accept, and when Primrose handed me the conveyance, I told him it should have been made to Waring and Wiswall. He offered to get another in that form; but I told him it did not make any material difference. I never heard before the filing of the bill, that the existence of the claims to these alley-ways made the slightest impediment in the way of the final settlement, and believe the statement that it formed an obstruction untrue. To the remainder of the 7th interrogatory I answer, that in the second interrogatory I have stated all that occurred, which I deem material to this suit, prior to the arrival of the plaintiff in Mobile. The cause was at issue in February, 1845, and in that month I think the plaintiff came. There was some conversation of a compromise for $5,000, and I was asked if it would be proper to accept of $10,000, if that sum was offered, but no offer was made of that sum. The suit was thereafter conducted as any other Chancery suit. My principal conversations were with Thompson, who was referred to by me as the responsible owner and manager. The interest of the other parties in Mobile had been made known to me, but they were not in any way interested in the cause. The plaintiff did not attempt any change. The existing arrangements were all preserved, and he harmoniously co-operated with them. All my arrangements for the suit, in the first instance, were made with Thompson alone. After the argument, and perhaps decree in 1847, Thompson and Collins came to me, and urged me again to bring suit for the Dubroca lands; and I reconsidered my former opinion, and then declined to do so. Five years after (1849) the division of the property, which might be recovered, was first discussed, and there were no parties to the discussion except Thompson and Collins. Two years thereafter (1851) the final settlement took place, and this was the first meeting of all the parties, of which I had any knowledge, and the first general discussion of the rights of any. The plaintiff remained in Mobile till the end of April of that year. Before that time, not a word of objection to any act done in the cause was ever uttered by any one

of these five persons, in my hearing, or of which I have ever been informed, that is not expressed in this testimony. I have stated the circumstances that occurred in respect to the decree of April, 1851, and in respect to the alley-ways. The parties, subsequently to the decree of April, 1851, obtained not only what Thompson had asked, but property of more value, and they all expressed themselves well satisfied at the issue in July, 1851. If the plaintiff, either in 1845, on his arrival, or in 1847, after the decree, or in 1849, when the deed of that year was made, and the Texas deeds withheld for another settlement, or in February, 1851, when that settlement was made, or afterwards, at the conversation in respect to the letters of Primrose and himself, of the 26th of that month, or during the spring, or until the deed of July, before possession had been taken, had made known to me what he asserts in the bill, and I had disregarded it, he might have complained with a show of propriety. Primrose, in July or August, 1851, wrote to me a letter in the name of the plaintiff and defendants, as well as his own, of grateful acknowledgments, and expressing full and unconditional approbation of the conduct of the case, taking upon themselves the blame of the misunderstanding that arose during the spring. This letter was filed among the letters of our firm, and search has been made for it there, but it cannot be found. I do not know where it is.

Int. 8th. When did your connection with said suit end, and by what agreement? Have you performed any acts of a professional character since the month of July, 1851, for them in reference to the property, and describe their nature, object and legal effect?

Answer. Very shortly after my return from Montgomery, in June, 1851, Primrose, Collins, Cleveland, and I think, Thompson, came to my office to inform me that during my absence a settlement had been accomplished. Primrose said the decree in April was the channel of communication between myself and the others, and on this occasion he told me of the terms of the settlement, mentioning, in general terms, the release by the defendants of a claim against Cleveland, and a claim against him, as a part of it, *as a part of it.* After going through this, he asked, "What of the fees?" I asked him, "What in respect to them?" He said, in reply, that they wanted ten years' credit on them. I told him they must arrange Mr. Chandler's fee with him, and Mr. Sergeant's with me, as soon as possible, and that with me there would be no difficulty as to time. The settlement with me was perfected the 19th of July by the delivery of a deed, a copy of which I attach. The form of the notes was adopted according to the wishes expressed to me by the parties. My authority from Mr. Sergeant will appear by his answer to a letter written to him at the request of the parties when the acceptance of Col. Hallett was expected to my proposition in April. In December, 1851, I wrote, at the request of the parties, a draught of a power of attorney, making provision for the management of their business. The draught was according to the instructions delivered. I was not

consulted in relation to the subsequent matter to which it related, but was only requested to prepare the paper. That draught, in my handwriting, has been produced, and has been delivered to me by the solicitors of the defendants, and I attach it to this answer. I was not consulted in regard to any of their sales of the property, nor did I draw any of their papers at their request, but two or three of their vendees were referred to me to certify the sufficiency of their title, as they informed me. I stated their title was good. I drew the papers for the Messrs. Battle at the request of Mr. John A. M. Battle. I know of no other professional act done by me, formally, for these parties concerning this property. If there was any, it was of little consequence.

Int. 6th. Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans'r. Shortly after this bill was filed, I prepared "a statement of facts," which is appended to the answer of James Campbell, a defendant in this cause. I confirm that statement, and say that I have compressed my answers now, because that statement forms a part of the record. Whatever is stated there, as a fact of my own knowledge, is true; and those statements that depend on information and belief are true, according to the information and belief. The remainder of the answer to this question will be made after the answers to the cross-examination.

Objections filed by the Complainant.

1st. The complainant objects to so much of the 4th direct interrogatory as calls for *all that was communicated to witness, or which he collected in conversation with the parties interested in the suit of their respective rights, &c.*, because it calls for illegal testimony, both as to the sources of the information, and the inferences of the witness, and also because it assumes that the witness is the judge of those who were interested, or had rights in the suit, and may give his inferences from conversations without naming persons, times, places, and circumstances.

2d. He objects, also, to so much of the 6th direct interrogatory as calls for whatever letters, writings, or communications may explain the transactions and views of the parties on the same grounds. And further, because it would admit in answer of letters, writings, communications, neither made, authorized, or sanctioned by the complainant, or known to him. He objects, also, to so much of it as calls for *letters delivered by the witness by complainant, &c.*, on the same grounds last mentioned. And he objects, also, to so much of it as calls for *the contents of any letter written by the witness to complainant, &c.*, because the same would be illegal testimony.

3d. And he also objects to so much of the 7th interrogatory as calls for *any fact to show that these parties were entirely content with all the acts and proceedings of the firm of Campbell and Chandler, and both its members, &c.*, because is leading, irrelevant, impertinent, and illegal; and without waiving these objections, or any of them, he cross-examines the said witness.

K. B. SEWALL, *of Counsel for Complainant.*

Direct interrogatories filed 18th November, 1856. Objections and cross-interrogatories filed 29th November, 1856.

GEO. E. HOLT, *Clerk.*

Cross-interrogatories to the Witness, John A. Campbell, and his answers thereto.

Int. 1st. When and where were you first made acquainted with the pendency of this suit, and the object of the bill? From whom and how were you informed?

Answer. In December, 1855, from an excited and indignant letter from Mr. Chandler, stating that such a bill had been filed a fortnight previously. I had been in Mobile, but never had any notice that such a bill as this was in contemplation. I was also several months, in 1855, in Mobile.

Cross 2d. Did you not receive a copy of the bill in Washington in December, 1855? If yea, from whom did you receive it, and why was it sent to you? Did you solicit it, or was it sent to you unsolicited on your part? Annex to your answer any letters that you may have received from the defendants, or any of them, or from their attorney and counsel in the case, or any of them, in regard to this suit.

Ans'r. Mr. Chandler wrote, he had directed James H. Campbell, who is my business agent as well as friend, to send me a copy which I received in a few days. There was no solicitation on my part in reference to it. I have had no correspondence with either of the defendants, since this controversy arose, of any kind. Such of the letters of the solicitors as are preserved are in Washington City, but if they were all with me, I should say that none of it was subject to this inquisition.

Cross 3d. Have you not felt, and expressed to others, a deep interest in this controversy, and that before the bill was filed?

Cross 4th. Did you not, before this bill was filed, use means of some sort, to induce an omission of all reference to your name in the statements and charges it might contain? Did you not say in substance, that if you were not mixed up in it, you would not interfere, but leave the parties to settle the controversy as they could?

Answer to 3d and 4th. In March, 1854, during a recess of the Supreme Court of the United States, I visited Mobile on my own business, and then heard there had been a quarrel among the parties, and that they had anxiously desired my return in order that I might arbitrate their difficulties. I had peviously received a note

from the plaintiff in February, which I have attached. I heard that the plaintiff had fallen under the delusion of Spirit-rapping, and was insane. I felt and expressed an interest in his situation and in the controversy. Upon my return to Washington City, in April, I found there a letter signed "An Insane Person," of an extremely obscure and filthy and wild character, which was addressed to me in the handwriting of Wm. D. Primrose, and had been received by my family during my absence. This letter I subsequently delivered to the writer. The counterpart of it was addressed to my brother-in-law, Judge Goldthwaite, of the Supreme Court of Alabama, which counterpart I have deposited with the commissioner, but from its character do not attach. A day or two after my return to Mobile from holding a term of the Circuit Court of the United States at New Orleans, I received the letter dated at Citronelle which I have attached. I did not doubt at the time, that the letter was prepared with the privity of Primrose. I regarded that letter as a great outrage. I regarded it as a letter of the same nature as letters known to the criminal law books as a threatening letter, and for which Primrose I thought was in a large degree responsible, and to signify "You see that we do not fear to say to you what you know that we *know* to be false. We show you the material that we will use to traduce and insult you. The prize to us is $200,000. We place before you upon what terms you may avoid insult and outrage, and make a profit for all. We intimate the matter delicately as we can, but understand us." Upon the receipt of that letter I sent for Mr. Cleveland, and, after stating generally about it, read to him the closing paragraph, and asked him if he had used such language, and what it meant? He declared that it was wholly untrue; that my name had never been used with any disrespect in any of the controversy. I told him that the two letters must have the effect of precluding all intercourse with any of the parties in respect to the controversy, and I did not wish to be mingled in any part of it. In April, 1855, Mr. Thompson called upon me for assistance in making some adjustment, and I gave him the reason for refusing all intercourse about it, and, I think on the same morning, communicated to Mr. John T. Taylor, who I learned was the attorney of Collins, what I had concluded, and that as I had told the others, I thought it right to say so to him. I spoke to him of the contents of the letter of Citronelle, and of its errors of fact, and told him that parts of it seemed to express a sentiment of kindness. Mr. Taylor told me that he had not heard of any blame upon me. I told him that I did not wish to be mixed with the controversy, and that I should hold my information impartially for all the parties. This, I believe, is the full extent of what I have done previous to this bill, and the motives which prompted my actions. It is proper to say, that Mr. Chandler informed me in July, 1854, after the receipt of the Citronelle letter, that both Mr. Smith and himself several weeks before, had peremptorily rejected any connection with any suit of the kind.

Cross 5th. Were you not requested to furnish a written reply to the bill in this case, before the defendants should be required to file their answers?

6th. Did you not forward such reply to Mobile, in order that it might be used in shaping the answers of defendants?

7th. Do you not know that the defendants obtained an enlargement of the time for answering the bill, for the purpose of considering your written statement?

Ans'r to 5th 6th 7th. I was not requested to furnish a written reply to the bill. I sent to Mobile a written statement, that it might be made an exhibit to the answer of James Campbell, and I hurried its preparation in order that there might be no delay. The affidavit bears date the 26th January, and it was forwarded the same day so that it could be attached before the February, the next rule day. I cannot answer as to the reasons of defendants for seeking an enlargement of time.

Cross 8th. To whom, and when did you forward this document, and what was your object in making it?

Answer. The statement was sent to Mr. Chandler. He was requested to show it to Mr. John T. Taylor, one of the solicitors of the plaintiff, upon its reception. I had heard from several members of the bar that this gentleman had expressed strong disapprobation of the allegations of the bill affecting me, and refused to sign it, and for this cause I gave that direction. The controlling motive for making that statement, and without which it would not have been thus prepared, is disclosed in the statement itself. I did not, under my sense of my obligation and duty, think it proper that such charges should remain on the records of the court (without a reply) and so to be cited as a reproach to the presiding judge of that court, and the court itself. This was my own deliberate conviction, and the statement was prepared on it. Before it was filed this opinion was sanctioned by Judge Goldthwaite, of Montgomery, and Mr. Hamilton, of this city, whose counsel was asked.

Cross 9th. Did you not know that you occupied the position of a witness? Did you not expect to be examined in the case as a witness?

Ans'r. I knew that I was a competent witness, and supposed that if the cause went to issue, I should be examined.

10th. Are not your feelings and wishes in the case all with the defendants?

Ans'r. I have no relations of blood, business, or personal friendship to either of the defendants, to affect my judgment or feelings in a case in which they are concerned. In reference to this suit, my feelings and wishes follow my opinion. I think the bill a long stride forward in the way opened by the Citronelle letter, and that the spirit and tone of these cross-interrogatories, are quite in harmony with those of the bill and letters above referred to.

Cross 11th. Have you not interested yourself for the defence, and

given your views with regard to it, to some of those concerned in conducting it?

Answer. Yes.

12th. Have you not endeavored to procure testimony for the defence?

Answer. Yes, in reference to such of the allegations in the bill as impugned my conduct, I have requested the solicitors of the defendants to examine witnesses in respect to every allegation, material or impertinent, in which I was in any manner concerned, and that wholly irrespective of any course the plaintiff or his solicitors might think proper to pursue, and of my own evidence.

13th. Did you not, last spring or summer, while in New Orleans, apply by letter to Messrs. Harris & Morgan, agents of the Texas steamers, for information as to when Sidney E. Collins arrived there in the winter of 1851? For whose benefit did you make this application?

Ans'r. I applied by letter and personally to Harris and Morgan, to examine their manifests in regard to the passengers from Galveston, from the 1st to the 15th of February, 1851, for the name of Collins, or Sidney E. Collins.

My object was that the documents of evidence might be carefully preserved to prove at what time the plaintiff landed in New Orleans in that month.

I did not state to Harris and Morgan in what respect I was concerned, or what result I desired to establish; I requested of them simply to examine and preserve their papers, and my purpose was to give the information to Messrs. Smith and Chandler, and to the court.

14th. Was the contract which you made with Drury Thompson, in 1844, for a fee in the Collins case in writing? If yea, annex it to your answer. If it was not in writing, state exactly its terms and conditions.

Answer. The contract with Drury Thompson was not in writing. My contract for a fee has been stated in my answer to the second direct interrogatory, and the conditions on which I undertook the suit, any departure from which would have entitled me to abandon it, are also detailed in my answers and statement.

15th. When did you first converse with Primrose about the Collins title to the property north of St. Louis Street?

16th. Had you not been frequently consulted by Primrose about this title prior to 1842? and had you not to him expressed a favorable opinion of it?

17th. Had you not, prior to 1844, intimated or expressed a willingness to be employed on the side of said title?

18th. Were not your views known to Thompson and Cleveland prior to January, 1844?

Ans'r to 15th 16th, 17th and 18th. It is quite possible I may have heard that Primrose was concerning himself about the Collins title,

among other litigations, prior to 1844, and that he may have mentioned it to me in some casual way. He once asked me if I would be concerned in a prosecution of a suit on the title, and referred to the refusal in the meeting in my office in February, 1851. I have no recollection of any particular conversation with him about it. I had no consultation with him or with Thompson, nor Cleveland, except as to the questions arising upon the Kennedy titles in other cases, and having reference to these cases—questions arising generally in court, and debated there. I answer, this case was a new one to me in March, 1844.

19th. Had you not, prior to January, 1844, given Primrose an opinion as to whether the Alabama statute of limitations of 1843 would affect this claim?

Answer. The statute of limitations of 1843 had no sort of influence upon this claim, nor did it bar any other for five years from its date. I cannot recollect to have told Primrose so, or to have had any conversation with him about it. This suit was brought April, 1844.

20th. When did you first converse with Wm. F. Cleveland, on the subject of the Collins claim? and when first with James Campbell?

Ans'r. In February, 1851, as set out in my statement.

21st. Before Thompson went to Texas, in January, 1844, you gave him forms for proper conveyances. How do you know that said forms had no relation to any suit?

Ans'r. Thompson, while clerk, frequently asked me for forms. I suppose if he had any from me, he obtained them as forms. I did not prepare for him any, with any expectation or purpose that I was to be connected as his attorney in any suit in which the Collins title was to be involved. I have no recollection to have given him any, to be used in any connection with the acquisition of 1844.

22d. Will you undertake to say you were Thompson's conscience-keeper, and familiar with all his plans and intentions?

Answer. I have no answer to this question.

23d. After Thompson's return from Texas, in January, 1844, did he tell you of his visit to Collins, and show you the deed and powers he obtained from Collins? and did you know their import and effect?

Answer. Thompson left his title-papers with me, and came in a few days after, and explained what was not embraced in the papers.

24th. Did you not know that the consideration expressed in the deed from Collins to Thompson had not been paid, and that said deed was in fact without consideration?

Answer. No.

25th. Did you not know that the whole transaction was, so far as Thompson was concerned, a mere speculation, and that his object was not to benefit Collins, but himself, and those concerned with him?

Answer. I inferred that it was a speculation, and probably that he looked to his own benefit.

26th. Did not Thompson at that interview manifest an intention in case of success, to claim all that the conveyance apparently vested in him?

27th. Why, after the examination of the claim in 1844, did you tell Thompson you could not bring suit, unless Collins was to be substantially interested?

28th. Why did you undertake to change the relations which were established between Collins and Thompson by the deeds and papers which Thompson showed you? Did Thompson show an intention adverse to the recognition of any rights to Collins, or did you fear such a result?

Answer to 26th, 27th and 28th. The conversation in respect to the disposal of the property to be recovered, and to the introduction of the plaintiff, as an interested party, was introduced by me, and did not originate in any suspicion or distrust of Thompson, or any doubt of the integrity of his papers, or of his own fairness. Thompson held a responsible public office, was well considered in the community, and my own opinion of him was a favorable one. But I habitually discredited speculative suits in my professional counsel and practice at the bar, and refused to bring such suits as the one proposed, unless the plaintiff was a party, substantially interested. My opinion was, that the claim of plaintiff could not be assigned so as to support a suit in the name of the assignee in law or equity; and that neither a court of law or equity would support the assignment against the tenant in possession. Thompson wished my services, and I told him the conditions on which he could have them. I did not know the plaintiff, and had no particular consideration for him.

I was committed to Thompson to take his case if I could do so properly. These explanations were designed to inform him on what terms he could have them. If they were not acceptable to him, he was perfectly at liberty to reject them. I was in no need of professional employment, and there was no occasion for me to bend any principle of professional conduct.

Cross 29th. Why were you not satisfied with Thompson's assurance that he would act liberally with Collins? And why were you satisfied with his assurance that Collins should have a substantial interest in the suit? Will you explain the difference between the two assurances.

Answer. I wished a party on the record who would be interested in the very subject of the suit, so that it might be truly said that the suit was his *suit.*

Cross 30th. Was the assurance which you relied on reduced to writing and signed by Thompson? Or was it a mere verbal assurance? If it was in writing, annex it to your answer.

Answer. My opinion was, that the position of Thompson was a precarious one, and that he was very much under the power of Collins. This I told him before the suit was brought plainly, and he did not, I think, forget it. I told the same thing to Collins in 1849,

when I thought it was proper to do so. I did not reduce any contract between us to writing. It was very rarely, indeed, that I did so, while at the bar, in reference to professional contracts.

Cross 31st. If it was not in writing, state precisely what were its terms, and what was the measure of Collins' interest in the suit thus procured by you, and how Collins was to be benefited by it.

Cross 32d. If, in imposing this condition on Thompson, as a preliminary to your employment, you were volunteering to befriend Collins, why did you not inform Collins of it before January, 1849?

Ans'r to 31st and 32d. I have stated that I considered it important for Collins to come to Mobile to appear ostensibly, and therefore to be really interested in the suit. What his interest should be in the suit I supposed would be arranged upon some just and equitable terms between Thompson and himself, and supposed this to have been done prior to 1849. The appearances were all to that effect. It is an error to assume that I was a volunteer to befriend Collins at this time, or that he was principally in my mind. If I had decided the suit could have been brought in the name of Thompson, the conversation, I suppose, would not have taken place. The benefit to Collins was an incident, but the question between Thompson and myself was whether I should take his case. After Collins did come to Mobile, and after the suit had derived the benefit from his ostensible interest, I should have resented any attempt to deprive him of what I supposed to be a just share; and upon the two occasions when his share was considered, he found me of this mind.

Cross 33d. If, in answer to any part of the second direct interrogatory, you have said that when the bill of Collins *vs.* Kennedy was filed, you had information of the rights of any of the parties concerned in the suit, state what parties you mean, give their names, and state from whom or from what you derived your information.

Answer. This is fully answered.

Cross 34th. If, in answer to the third interrogatory, you have spoken of any participation of Collins in the conduct and management of the suit, specify and set forth every act done or performed by Collins in such conduct and management, and state when and where each act was performed, and how you obtained your knowledge of them.

Answer. The important act of Collins was in being present in Mobile to represent the case, and, to display that character, he attended the examination of witnesses, and interested himself in the collection of testimony. I have mentioned the names of those about whom he concerned himself, so far as I know, and the Texas witnesses are to be superadded. It is a part of the history of the case that he was here and identified with the suit, and I cannot tell particularly the mode any more than I can tell the particular acts that Thompson did or Primrose.

Cross 35th. Did you not, at the request of Cleveland, Thompson, Campbell, or some of them, appoint the time for the meeting which

was held at your office in February, 1851, referred to in the 6th direct interrogatory?

Answer. At the request of Wm. F. Cleveland.

Cross 36th. Did you not request the complainant to come to your office on that occasion, and was not this request made on meeting him on Royal Street, near Mrs. Robb's building?

Answer. I have considered this question, and cannot recall such an incident. It is certain that none of the parties met Collins as a stranger, and that neither I or any one else received him as a person seen for the first time after a long absence. The meeting was of persons who had seen each other before, and expected to meet at that time.

Cross 37th. When did you purchase an interest in the lot at the northeast corner of Water and St. Louis Streets? How much did you pay for it? When did you sell that interest, and for what sum of money?

Ans'r. In April, 1849, at the bank sale. I have stated the price, $3,533 33. I offered the property for sale to Mr. Waring in May, 1851, but did not complete the sale until later. See annexed statement.

Cross 38th. Is not the letter, purporting to be from Sidney E. Collins, delivered to you, and bearing date Feb. 25, 1851, in the handwriting of Drury Thompson?

Ans'r. All except the signature.

Cross 39th. If, in any part of your testimony, you have stated that the parties interested proposed to give you five thousand dollars if you would go to Washington and argue the case before the Supreme Court, state the names of the persons who made such proposition, and when it was made.

Answer. Thompson and Primrose proposed to me to go to Washington to aid Mr. Sergeant. This I declined. Mr. Sergeant first wrote that he required assistance, and afterwards that he found he should be unable to argue the case at all. They renewed their solicitations, and upon an inquiry from me, what they supposed the service to be worth, the answer of one of them was $5000. I did not treat this as an offer, but as an indication of their disposition to pay largely. This was in the winter or spring of 1850. The sum paid was five hundred dollars.

Cross 40th. If you have stated that the defendants, or any of them, during the pendency of the suit of Collins *vs.* Kennedy, rendered valuable services for the complainant, specify and set forth what the services rendered by each of them were, and when and how rendered, so far as you know.

Cross 41st. Specify any valuable services rendered for the complainant in that suit, during its progress, by James Campbell.

Cross 42d. Specify and set forth any valuable service rendered for the complainant in that suit, during its progress, by William F. Cleveland.

Cross 43d. Set forth and specify, in like manner, any and all the valuable service rendered in the case by Drury Thompson.

Cross 44th. What amount in money would be a fair and full compensation for all the services rendered, in the prosecution of said suit, by each of said parties defendants.

Answer to 40th, 41st, 42d, 43d, and 44th. To answer these questions fully, it would be necessary to consider the position of the plaintiff at the time these persons, defendants and Primrose, made their contracts and undertook the acquisition of the title. The bill describes the plaintiff as a resident of Texas from 1836, as ignorant of any claim, and without the means of prosecuting any right. The case was one of extraordinary difficulty, involving expense, labor, trouble, anxiety, and reproach to those who conducted it, and was doubtful in every stage of it. The day the decree was delivered by Judge Crawford, Col. Aiken said to me that he considered our decree had placed us on a footing of equality with him, and we had better divide. I told this to Thompson, and said, if the offer was made, I should strongly favor its acceptance. So when I went to Washington I had authority from Thompson to continue this case if such an offer was made and I could not hear from him. He was always sanguine and eager, and opposed to a compromise. Now, whatever of labor, anxiety, expense, activity, vigilance, and professional skill and ability were brought to the prosecution of this suit, is due entirely to the defendants and their associate Primrose, and the arrangements made by them, except such as were contributed by the plaintiff. My own opinion is, and I have before stated, that the plaintiff has misdescribed himself in his bill in several particulars, and among these the importance of his own services in the case. I considered that the claim at the first as a hopeless derelict, and the beneficial service in reference to the plaintiff, as rendered by them in the prosecution of the suit, as of the highest order of value and merit, and upon the principles of a *quantum meruit* he has no reason of complaint. I have mentioned, incidentally, their relative positions in the cause. The cause was in the first instance received as the cause of Thompson. My contract was made with him exclusively, and neither the plaintiff nor any other had anything to do with the negotiation, and he was the responsible manager from the first to the settlement in 1851. I recognized Collins in my intercourse to have an interest, and Primrose to have an interest, and collected during my negotiations in reference to going to the Supreme Court that Campbell and Cleveland were equal with Thompson and Primrose, having heard before they had an interest. The services of Primrose he twice communicated to the plaintiff, to my knowledge; once at the meeting in my office, and once in a letter attached. And, without affirming his statement on either occasion, I agree that in his department he performed services of very great value pending the case. I heard generally that Cleveland was consulted by these persons, and his local knowledge was perhaps superior to either. I suppose that Mr. Campbell did not

participate in the actual management. I can form no estimate of the pecuniary or individual services of either, but I attribute to them and their efforts the successful issue of the suit, and to them that the plaintiff did not compromise for a comparative trifle. I have answered these questions, supposing them to refer to my notion of the consideration of the deed of 1851, as stated on its face. The subject was one that did not allow of any close judgment. The judgment as to what substantial interest the plaintiff should have was considered upon a view of all the circumstances.

Cross 45th. Specify and set forth any contract, within your knowledge, between S. E. Collins and William F. Cleveland and James Campbell, which bound Collins to pay them, or either of them, anything whatever for anything done by them to aid in the prosecution of said suit.

Cross 46th. At the time of the meeting in your office in February, 1851, what contract existed, of any form or description, binding Collins to pay Cleveland and James Campbell anything whatever? If you know of any such contract, set it out?

Cross 47th. Were not all the deeds and papers of every description at that time, to which Collins was a party, relating to said suit, solely between him and Drury Thompson, except that relating to your fee?

Cross 48th. And do these deeds and papers, or any of them, or any indorsement made on them with the knowledge of Collins, contain one word referring to any one else than himself and Thompson as the parties? If they do, set forth the same fully and particularly.

Answer to 45th, 46th, 47th, and 48th. All the contracts that I have any knowledge of, among any of these parties, are to be found in this record, and all the circumstances attending their execution, or which disclose their rights, that are known to me, I have detailed in this deposition.

Cross 49th. Did not Collins, in 1849, state to you that he had made a deed in Texas for the whole property, and that the existence of that deed troubled him; that he wished to do what was right, and was willing to make Thompson a deed for half the property? And, after this new deed was made, did not Collins complain to you that Thompson still held on to the papers, meaning those executed in Texas, and did not wish to give them up?

Cross 50th. Was it not both Collins's and your own understanding that *that* this new deed was a substitute for the old one? Could any other legitimate inference be drawn from the face of the papers?

Answer to 49th and 50th. All the facts and conversations attending the negotiations concerning the deed of January, 1849, with my own impressions as to the condition in which those parties stood at that time, I have answered in the fourth direct interrogatory and in my statement of facts. What their effect may be, I suppose I am not called on to consider.

Cross 51st. Did you not ask Thompson why he did not give Col-

lins up the old papers? And did you not tell him, Thompson, that holding both deeds would be of no advantage to him, and was not the old deed after this conversation marked "cancelled?"

Answer. I asked Thompson the question mentioned in this interrogatory, in the manner described in the fourth interrogatory. I did not tell him his holding both deeds would be of no advantage to him, that I remember. I gave him in 1844 specific information in regard to his situation under that deed, and how far he was under the power of the plaintiff in the suit. And I did not see the Texas deeds marked cancelled, within my remembrance or belief.

Cross. 52d. Did you not also draw an endorsement on the power of attorney, or a statement to be endorsed thereon, for Thompson and Collins to execute, which limited the power of attorney to the extent of the new deed? and was not the same executed by them, and is it not correctly set forth among the exhibits to Thompson's answer to this bill?

Answer. My impression is, that I drew a paper from which that endorsement was prepared. I suppose that the paper alluded to in the answer of Thompson had been executed by the parties. I was not present at its execution.

Cross. 53d. Do you not recollect that the above endorsement was drawn by you in the presence of Collins and Thompson, in what was the Probate Court-room, in the old court-house?

Answer. My recollection is that I did not draw the papers when the instructions were given in consequence of the absence of the Texas deeds, to which I wished to refer. I have no recollection that the two papers executed in 1849, were drawn separately. The papers drawn by me were not executed, but similar papers were prepared from them. My impression is that the papers drawn by me were drawn in my office (the impression is not a strong one), and the papers executed were made up, and executed between them, C. and T., a day or two after in my absence.

Cross. 54th. If the deed made by Collins to the defendants in 1851, vested in them two-thirds of the estate recovered, why did you in a sale of a portion of the property to the Battles in 1852 draw the conveyance so that Collins was the sole grantor?

Cross. 55th. Was a warranty deed required by the Battles? and if so, was the warranty of James Campbell, Cleveland, or Drury Thompson, of no consequence to the purchasers? or why was the sole responsibility of the covenant of warranty devolved upon Collins?

Cross. 56th. What was the reputed wealth and responsibility of those persons, James Campbell, Wm. F. Cleveland, and Drury Thompson, at the time of the execution of said deed to the Battles?

Answer to 54th, 55th, and 56th. In the spring of 1852 (I think), John A. M. Battle came to my office, and informed me he had purchased two blocks of lots for $35,000, from Collins, and had been referred to me in respect to the titles, and wished me to examine

them. That Collins was to give him a warranty deed. I told him there was no occasion for me to examine the titles, for I knew all about them prior to the July preceding, and I supposed they had not been affected since, and told him the title was unquestionable, and mentioned some of the facts in regard to it. I told him that a deed from Collins was not sufficient to vest the title, but that Cleveland, Campbell, Thompson, and Primrose, should likewise convey, and that the wives of those who were married should release their dower. He was somewhat surprised at this communication, and then told me to draw the papers, and if they did not sign, that he would not take the property—that he must have good titles, &c. I drew the deed that Collins had agreed to give him, and deed such as would perfect the title against the parties, according to my suggestion, and either gave or sent the deeds to him. As to the warranty, I did not consider it of much importance to vendor or vendee, but should certainly have inserted one, if I had understood Mr. Battle, that such was his will, though I considered the title perfect, and the responsibility of a warrantor as trivial. Why the contract was made as represented by Mr. Battle, I have no knowledge, having had no concern in the matter for Collins, or for his co-tenants before, or for Battle.

Primrose was, I think, the adviser of the parties as to such things. He, Primrose, came to me after I had delivered the papers to Mr. Battle, and entreated me to have his name stricken out, for that he did not wish his name to appear upon papers of that kind, but I told him I could not advise Mr. Battle to that effect. I do not know anything of the responsibility of the co-tenants, but suppose the persons named to be men of liberal fortunes.

My friends and clients, the Messrs. Battles, have never complained to me that the papers I prepared did not suit them. They paid me twenty dollars.

At this point the further examination of the witness was adjourned to Wednesday, the 25th March inst., there being certain exhibits to copy. R. B. OWEN, *Commissioner.*

Wednesday, March 25th, 1857.

The examination of the witness being this day resumed, pursuant to adjournment, he proceeded for continued answer to the general direct interrogatory to say as follows: In reference to the circumstances occurring between February 15th, 1851, and the preparation of the decree of April, 1851, I think it material to state, that Thompson, Collins, Cleveland, and Primrose, usually came to my office together to speak of the accounts, and acted in apparent harmony in respect to them, that I did not dispute their authority to control the whole subject during my intercourse with them, nor to engage counsel to conduct their operations. I simply refused to be concerned with a prosecution which I believed to be unconscionable. I believed also it would be an unprofitable litigation. I will state

further, that in adopting the course I did, I followed a principle which I had pursued in other causes of value equal to this, and involving pecuniary sacrifice to myself. I think, also, in view of the language imputed to Mr. Cleveland (untruly as I believe) in the letter from Citronelle, and to a confession reported by Mr. Cleveland in his answer relating to the same subject, by one of his associates, to say that I never heard of any fraud or malpractice in the preparations of the suit of Collins *vs.* Heirs of Joshua Kennedy, &c., nor of any irregularity affecting the merits of the decree given.

J. A. CAMPBELL.

Exhibits attached to J. A. Campbell's Testimony.

Pittsburg, Pennsylvania, August 29th, 1851.

WM. F. CLEVELAND, ESQ.

Dear Sir: We return to day to Cincinnati, where we shall remain a few days, trying to sell the land in Ohio, or to bring suit for it. We have not got any information here of much importance, and Mr. C. speaks of returning by way of the Miss. River. I shall endeavor to prevail on him to return to Erie, and examine minutely the titles of Col. McNair, and see if we cannot find some recognition of Collins's interest.

We have not been able to find McNair's titles. He mortgaged more than one hundred thousand acres in 1797, to secure the payment of $22,300, being one half of 235 tracts of land in various places. I think, if McNair's titles are well examined, we shall find something said about the lands of Collins, as they improved and acquired them jointly. Nearly all the old land pirates are dead, and those that are living do their best to discourage us. If Mr. Collins is governed by me, we shall return to Erie, and to the adjoining counties, and make diligent search, and then to the different surveyors' offices. We to-day heard of a surveyor who had a plot of all the lands of McNair, made in 1796 or 1797. If we do not find what we want, I think Collins had better move out with his family, and spend a year or two near the lands, and get to see the original title-papers of those who own the lands, or claim it at present. The land is too valuable to be given up, without a most diligent and thorough search.

There are several old persons here we ought to see, but I cannot get Mr. Collins to remain any longer. I could do much better by myself. He does not appear favorably inclined to see old residents, since we saw the old fellow at Chilicothe that knew his father.

Your friend, in haste,

WM. D. PRIMROSE.

P. S.—I have told Mr. Collins that he and Mr. Thompson must make out and swear to it (such an affidavit as I would suggest), before we would be satisfied that they were not jointly interested. The reason I done it, he said we were not satisfied because we did not get all the land, &c.

WATERFORD, PENN., 14th Sept. 1851.

WM. F. CLEVELAND, Esq.:—

Dear Sir: I arrived here on yesterday, on my way to Meadville, Crawford Co., to search the records for evidence of the Collins lands.

Mr. Collins and myself separated ten days since at Cincinnati, Ohio. He was to leave in a few hours after I left (by the river), for Mobile. I presume that he will be at home in a few days after this reaches you, and will give you a history of our rounds and travels. I requested him to continue on with me, but he was tired of travelling, and determined to get home to his wife and family as soon as possible. I fear he will have a very disagreeable time going down the river—the weather so hot, and the water so low. I called on the Hon. Judge Vincent, of this place. He is a very old man, and the uncle of the late Capt. B. Vincent, of Mobile, and, besides, a sort of half-way family connection of mine; has resided here sixty-four years, is nearly 90 years old, and one of the judges under the old constitution, which he has outlived. He has shown me a map of the Collins and McNair lands; they lie near this place—some tracts within a mile, consisting of 37 of 440 acres each. They acquired the lands by settlement and improvement, in 1796, giving a ¼ of each tract to the actual settler for his services, in complying with the requisitions of the law, in keeping up the settlement and improvement for two years. But four of the tracts are patented, and, consequently, there is no limitation in the way, and if we can get hold of the agreement of Collins with McNair, we can recover the land.

McNair, some forty years since, indorsed a note for one James Baird, a Santa Fee trader, who was subsequently robbed and killed by the Mexicans. The note fell into the hands of the late Judge Baldwin, of the S. C. U. States; he transferred it to George Poe, Jr., late of Mobile. McNair was sued, and his interest sold. Poe bought it in, and has let it all be sold for the taxes, and gone into different hands—some into McNair's son's. The rascal pretended to me and Collins he knew nothing of the Collins land, &c. Mr. C. is going to stop at Natchez, Miss., and see if he can hear anything of Thomas Hutchins, agent of his father to sell these lands in 1810, and who has the title-papers probably. My opinion is, that Lanier, after he married Mrs. Collins, changed the name in the memorandum to Collins's will, and that the right name is Thomas Collins, agent, instead of Thomas Hutchins. Thomas Collins was a lawyer here of wealth and high standing, from 1790 till his death, a few years since; was intimate with, and the attorney of, Joseph Collins while in this section of the country. I think that Lanier thought, by changing the name, he could get something out of the lands, and the heirs of Collins would never find it out. The lands were formerly in Alleghany Co.; from 1800 to 1806 in Crawford Co.; since then

in Erie Co.; the two last-named counties having been taken off the first. I am going to Meadville, Crawford Co., to examine the records, tax assessment, &c., to see if any evidence remains of Collins's interest. This is the place where Gen'l Washington came to with despatches from the Gov. of Virginia to the French, prior to Gen'l Braddock's defeat.

I shall return to Erie, Penn., in about 10 days; then leave for Milford, Delaware, via New York. I presume that we shall finally have to file a bill against the heirs of McNair and the settlers on the lands, and make them produce the contracts with Collins. Mr. Collins considered the case as utterly hopeless before he left; he is not a good hand to investigate old matters. I want you to tell him that I shall require him and Thompson to swear to such an affidavit as I will write out, before I will believe that they are not jointly interested in humbugging and cheating us, &c. &c.

I am, most respectfully, &c.,
WM. D. PRIMROSE.

Joseph Collins came to Carlisle, Penn., with the army under Washington, going out to put down the whiskey boys in 1793. They were there joined by the Virginia and Maryland troops, and there Gen'l Washington assigned the command to Anthony Wayne. After the whiskey insurrection, the army was ordered out to Ohio, and conquered the Northwestern Indians in 1794, '95, and then returned to Erie, where Gen'l Wayne died. Yours, P.

(*Confidential.*)

MILFORD, DEL., Oct. 6, 1851.

MY DEAR SIR: I arrived here a few days since on a visit to my parents. On to-morrow I shall leave for Philadelphia, remain there a few days, and then depart for Mobile. You may expect me by the 20th instant.

I am well posted up on all Collins's matters. The conduct of Thompson has been so rascally and treacherous in annulling our deed from Collins, that I am determined, if it your and Mr. Campbell's approbation, to take measures that will reinstate us in our just and original rights. I am in excellent health.

I remain your friend, &c.,
WM. D. PRIMROSE.

To WM. F. CLEVELAND, Esq., Mobile, Ala.

Philadelphia, 15th Oct. 1851.

WM. F. CLEVELAND, ESQ.

I leave to morrow evening pr. mail route for Mobile, via Charleston, S. C. I presume that I shall not reach home before the 25th instant. As the Alabama River is low, we shall be some three or four days coming down. My uncle, Violet Primrose, accompanies me. The more I think of it, the more strange it seems that we should for

a moment have been humbugged by Thompson. I have much to say to you about matters and things. I am well.

Your friend truly, WM. D. PRIMROSE.

The four foregoing letters from Primrose to Cleveland, were proven to be in the proper handwriting of said Primrose.

R. B. OWEN, *Commissioner.*

Exhibit to 37th Cross-Interrogatory.

The following statement was made by Mr. Waring in 1851, showing the cost to John A. Campbell, of two parcels of property, in which they were jointly interested. One being the lot northeast corner of St. Louis and Water Streets.

One-third cost of property		$6,606 93
Cash paid, 18 January, 1850		850 00
Interest to August 1st, 1851		114 83
City taxes 1850		30 00
Railroad tax		18 00
		$7,610 51
Total am't repairs,	$8,885 77	
Rent to 1st Aug't, 1851,	$6,338 22	
Deduct for bad debts, 200 00,	6,138 22	
	$2,747 55	
J. A. C.'s ⅓ part,	915 85	$915 85
		$8,526 36

The rents become due 1st August. The sale to Waring was for eleven thousand dollars, on a credit of ten years, interest payable annually.

J. A. CAMPBELL.

Memorandum.

The letter from Col. Hallett, referred to in the latter part of the 8th sheet, to which, the letter of Primrose, dated 19th of May, was in effect a reply, is mislaid. It was dated 14th of May, and is as described in this deposition and former statement. I had it at the time, when the addenda to my statement referring to it was prepared. If Mr. James H. Campbell is able to find it, I will cause it to be produced before the Court.

J. A. CAMPBELL.

THE STATE OF ALABAMA,
Mobile County.

The undersigned, being interested in the lands hereafter described jointly, and being desirous of improving a parcel of the same, it has been agreed between us, that Sidney E. Collins and William F. Cleveland, shall be appointed with authority and powers irrevocable, except by the consent of all the parties, which the said parties have agreed to accept. Now these presents witness, that the parcels of

land, between Commerce, Front, St. Louis and St. Anthony Streets, are to be improved by the erection of such buildings, as the said Cleveland and Collins shall agree to, and for the purpose of enabling them to raise the money needful, we respectively authorize them to execute any mortgage, to give any lien, or incumbrance on the said property, they may find necessary or deem prudent for that purpose, redeemable at such time as they may think fit. We do authorize them, moreover, to collect all the rents that may accrue from the property lying between St. Anthony, Royal and St. Louis Streets, and the River Mobile, on property belonging to us, and also the parcel of land lying north of St. Anthony Street and east of Royal Street, held under the same title as the other lands we mentioned above. We do also authorize our attorneys aforesaid, to expend all moneys that they may thus raise, in improving and making more productive the property aforesaid, and we do give to our attorneys entire control over the land first above described, for the purpose of making contracts for said improvements. We do also authorize our attorneys to make contracts for bricks, lumber, and all other materials necessary or requisite for the full and complete execution of the object of this power. We do also, moreover, authorize our attorneys to sell for cash, or on a credit, those parcels of land in the said City of Mobile, bounded on the south by St. Anthony Street, and between that Street and State, to the east of Royal Street, and bounded east by the Shippers' Press property, held by us under the title of the other property, and also the square bounded west by Water Street, east by an alley-way, north by St. Anthony Street, and south by an alley, having a front on Water Street 115 feet more or less, and to execute in our names, all such deeds to the purchaser, and to take from him such securities for the purchase money as they may think expedient, and to collect the same at maturity, as they may receive the money from the purchaser, and give the proper acquittances therefor. And we do also empower our attorneys to liquidate, settle and pay off all incumbrances on any of the property before mentioned, or on the land between Royal, St. Louis, St. Anthony, or the River Mobile, or any notes given by either of the parties to these presents, on account of the suit in which said property was recovered, and all the acts that may be done under this power, we hereby agree to ratify and confirm.

Witness our hands and seals, this day of October, 1851.

This paper was produced to me, and proven to be in the handwriting of the witness. It is referred to in the answer to the 8th interrogatory. R. B. OWEN, *Com'r.*

THE STATE OF ALABAMA,
Mobile County.

We hereby acknowledge ourselves to owe John A. Campbell ten thousand dollars ($10,000), to be paid to him or his assigns, ten (10) years after the date of these presents for professional services. We

agree also to pay legal interest at the rate of eight per cent. per annum, on this sum. The interest to be paid on the first day of July of each year, and for which we have given ten promissory notes. No other note of the principal debt having been given than is herein contained, to secure the said John A. Campbell the said debt, and the interest annually due on the same, according to the notes of Sidney E. Collins and James Campbell, for which we are also bound, we have granted, bargained, sold and conveyed, and do grant, bargain, sell and convey to the said John A. Campbell, his heirs and assigns forever, that parcel of land in the City of Mobile, bounded north by St. Anthony Street, south by St. Louis Street, east by Water Street, and west by Royal Street, with its privileges. To have and to hold the same to the said John A. Campbell, his heirs and assigns forever, upon this trust and condition, however, that if the said promissory notes are paid as they severally fall due, and at the end of ten years expressed in this bond, the sum of ten thousand dollars shall be paid to the said Campbell, or his assigns, then these presents to become null and void, else to have full force and virtue.

In witness of which, we have hereunto set our hands and seals, the first day of July, A. D. 1851.

(Signed) SIDNEY E. COLLINS,
WM. F. CLEVELAND,
JAMES CAMPBELL,
DRURY THOMPSON, [SEAL.]

THE STATE OF ALABAMA,
Mobile County, ss.

Be it remembered, that on this the nineteenth day of July, A. D. 1851, before me, George Conway, a Notary Public in and for Mobile County, State aforesaid, personally appeared the within named Sidney E. Collins, William F. Cleveland, James Campbell and Drury Thompson, who acknowledged each, that they signed, sealed and delivered the foregoing instrument of writing to John A. Campbell, on the day and year, and for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and seal notarial, this the day and year before written.

GEORGE CONWAY, *Notary Public.*

THE STATE OF ALABAMA,
Mobile County, ss.

I, John A. Hitchcock, Judge of the Court of Probate in and for said County, do hereby certify that the foregoing is a true and correct copy or transcript taken from the records, as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and seal of said Court, this 30th day of January, A. D., 1856.

[L. S.] JNO. A. HITCHCOCK, *Judge.*

The original of this deed was produced and this copy left. It is referred to in the answer to the first interrogatory.

R. B. OWEN, *Commissioner.*

A copy of a letter from the Hon. John Sergeant, the original of which was produced and proven, and is now in my possession.

R. B. OWEN, *Com'r.*

PHILAD'A, *April 26th*, 1851.

My Dear Sir: Your kind favor of the 17th came duly to hand this morning. I am glad to learn from it that you are likely soon to have a final settlement of the Collins case, and that you will be enabled to make it upon terms which are just and fair. There is a duty in all cases to exercise power gained over others with equity, and I am very glad to find that our client's having gained a position of command by your skill and persevering labor, have abstained from everything vindictive, though they have done themselves full justice. Agreeably to your request, I send you herewith the "contract," and the letter (15th Nov., 1848) which inclosed it, as well as a previous letter of July 13th, and I hereby give you full authority to arrange for the payment, according to your own good judgment. If a more formal authority should be required, please let me know, and it shall be sent. I have been frequently sick since we parted at Washington, but have suffered more from sorrow than from sickness. I hope your health is good. Yours very truly,

J. A. CAMPBELL, ESQ. JOHN SERGEANT.

(An extract from the foregoing letter is appended to J. A. Campbell's "Statement of facts." (Page 480.) *Clerk.*)

June 15th, 1845.

Mr. JOHN A. CAMPBELL:—

Sir: Having had a conversation with Mr. Benjamin Lanier, I think his statements might be of some advantage in my suit with Joshua Kennedy. I have taken them down in substance, and submit them to your better judgment. Mr. Lanier states that, some time between the years 1812 and 1815, he gave Wm. E. Kennedy the field-notes or plot of survey for two lots of ground in the city of Mobile, one of them known as the water lot, the other he does not know how known, or where situated, for which field-notes he took Wm. E. K.'s receipt. That Wm. E. K. produced an agreement that satisfied him Wm. E. K. had an interest in the lots. That K.'s statement was, that he wanted the field-notes to put upon file in the land commissioner's office, to secure the title under the American government. That afterwards Kennedy told Lanier that he had not filed them as agreed upon. That after examining, he (K.) had found out that he (K.) had an older and better title than the Collins title. That he (Lanier) could never get the field-notes in his possession. That Kennedy continued to set up his own as the best claim

up to his death, having seen him frequently during this time. Wm. E. K. resided at Bon Secour, and visited Lanier at Pascagoula, where and when their acquaintance commenced.

Lanier was administrator of the estate of Collins, which was revoked by Judge Bradford for what cause he does not know.

He never was summoned to answer any suit whatever. That P. King and Thomas Hubbert were appointed in his stead. That the first knowledge he (L.) had of the revocation, Perry King presented an order from Judge Bradford to surrender to King and Hubbert all paper and effects in his possession, that he done so, and took King's receipt for the same. Among which papers surrendered to King he is sure there was *Spanish titles for the two lots above alluded to, in favor of Collins.* That he became acquainted with Joshua Kennedy at Bon Secour, at the house of Wm. E. K., and had several conversations with Joshua Kennedy concerning the Collins title up to 1828, that Lanier visited Mobile, and remained about a week at the house of Joshua Kennedy (at his solicitation) when Joshua made the following propositions: That for Lanier to join him in cheating the heirs of Collins of their lands, and among the rest this water lot was spoken of. He proposed that I should move to Mobile (I then lived in Louisiana), and that he would build me a house in or near Mobile, and settle me comfortably, and have me appointed administrator of that portion of Collins's estate in the State of Alabama, and that if I would be guided by his advice that he would manage it so as to make me independent. I refused to join him on the ground of my feelings for the children. He then turned the conversation by saying that he thought more of me for my honesty, but said it made no difference, that Wm. E. Kennedy had a better title to the water lot than Collins. Joshua stated that he was executor of Wm. E. K.'s estate, and to prevent the heirs of Wm. E. K. having a vexatious lawsuit, he would give the heirs of Collins something for their title (or claim). The land that Joshua professed to have the title in himself, was a tract on the Three Mile Creek (I think it was a 4 or 800 acre tract). Joshua Kennedy argued in favor of joining him in the fraud, that I had been badly treated by the friends of Collins, in having the administration taken from me in Jackson County, Mississippi, and it would be no more than right to join him in self-defence, and by that make myself independent.

Mr. J. A. C., I have this as near in the old man's language as I could. If you think it will be of any avail, instruct me how to proceed to avail myself of it.

The receipts spoken of above, is more than probably lost; the old man thinks they are. He had his house burned at Pascagoula, in which he lost many papers, though he has a lot of old paper not far off, which I will examine shortly. I received a line from Mr. Thompson, of Mobile, in which he states that he thought all parties had agreed that Judge Crawford should try my case. Knowing that no

one except yourself knows how the case stands, I would like (if you should have time), that you would drop me a line. I will say in conclusion, that if you have any doubt of the final result of the case, I would prefer a compromise. Mr. Thompson seems very confident of my ultimate success. The citizens of Texas are straining every nerve to organize the State Government in time to met the Congress of the United States in another year, or less perhaps. You may locate your client as a citizen of Texas.

Respectfully your ob't s'vt,
SIDNEY E. COLLINS.

Address me, Liberty Post Office Texas.

Gen. Davis says he knows nothing in relation to my suit with Kennedy, and knows none of the parties. E. J. G. A. who he says he knows to be a contemptible pup. This letter is written under many embarrassing circumstances, and will require a degree of study to arrive at its meaning. S. E. C.

Mr. John A. Campbell, Mobile, Alabama.

Liberty County, State of Texas.

JOHN A. CAMPBELL, ESQ.

Dear Sir: You will excuse me for disturbing you with this letter, when I inform you that I have had nothing definite about my matters in Mobile, since I saw you. Mr. T. has written, it is true to, me, but the only expression in relation to the case was, "Nothing more from Washington." You will oblige me by dropping a line informing how the matters stand, and when you expect a trial. I failed in getting those old papers from Mr. Thompson, after signing the one you drew up for us. Write me whether you think I am running any risk in confiding in the honor of Mr. Thompson. If so, give me such advice as you think best for my safety, and I will ever remember you with gratitude. These are solicited out of no ill-will, and are expected to be kept in secret. Yours respectfully,

SIDNEY E. COLLINS.

August 9th, 1849.

John A. Campbell, Esq., Att'y at Law, Mobile, Ala.

(See extract of foregoing letter "Statement of Facts," pa. 435).

Clerk.

Liberty County, State of Texas, June 24th, 1850.

DEAR SIR: I notice that in the Republic, that the case No. 114, J. J. Kennedy, appellants, *vs.* S. E. Collins, the argument was concluded on the 29th of May, by Att'y Gen'l Johnson, and the case adjourned back to the time and place appointed by law. The latter part of the paragraph I do not understand, to wit, adjourned back to the time and place appointed by law. I write this to solicit of you to inform me of the position at present, and what will be the future course the case will probably take, and will be thankful for any information you may think proper to communicate.

My health since I saw you has been very bad, also that of my family, but I think we are mending at present.

Your ob't servant, SIDNEY E. COLLINS.

To John A. Campbell, Mobile, Ala.

Here follows letter from S. E. Collins to John A. Campbell, Esq., dated Feb'y 25th, 1851, in regard to taking an account against the estate of Kennedy, etc., being Exhibit I, to Thompson's answer (see page 265 & 1062), and also appended to "Statement of Facts."

Clerk.

Mobile, February 26th, 1851.

MR. SIDNEY E. COLLINS.

Sir: After a night's calm reflection, a sense of justice and duty to myself, dictates this notice to you.

In the case of Sidney E. Collins *vs.* Hallett & Walker, the Heirs and Representatives of Joshua Kennedy, dec'd, I have to say, that the defendants are in such a position that they will be compelled to surrender at discretion, or be totally ruined forever. I have made a full and complete calculation of the accounts between the parties, and to say nothing about the property north of St. Anthony Street, the balance in your favor will be not less than one hundred and forty thousand dollars in cash; a sum more than the assessed value of the land this present year.

I wish to call to your mind, that my just right and equity in this matter is higher than yours. You claim by right of descent. I claim by right of discovery and services rendered. If I had not been in the case, the defendants would have made such a case by proof that would have discouraged Messrs. C. & Chandler, and the result would have been a compromise for a few thousand dollars; and besides you would in all probability never have brought suit, remained in ignorance of your rights, &c. &c. In 1839, I bought a pony, went to Missi. in search of, and found out where you resided, spent the little money I had, so in September was compelled to go to my relatives in the country with only $20 in my pocket, after having the fever, and this against the opinion of my physician, who said it would kill me to travel. But the idea of remaining and contracting expenses which I was unable to meet forced me to risk it. The pony and the trip to Missi. on your business cost me $75. I have suffered much in reputation, besides my life twice jeopardized, attending to your interest. Some of the defendants being unprincipled men, have resorted to all means in their power to injure me. It would be folly in me to recite many things that are passed, so I will content myself by notifying you, that I will hold you at all times responsible if you release the defendants Hallett & Walker, *et als.*, without their giving or signing a full release to me, for any claim J. Kennedy may have, or his heirs or representatives, growing out of, or arising out of, any transaction between myself and Jesse Carter; and further, without their paying in money, or unimproved or other pro-

perty in the city of Mobile, of the value of ten thousand dollars, with interest from 1835, the day of the sale of 100 feet square to C. & Cleveland, north of St. Louis Street. I requested you to speak to J. A. Campbell, and get a full release to me from the Kennedys. You never mentioned it to him; such ingratitude requires that I should look to my own interest, and you may rely that I shall do so. If the above terms are not complied with, and a settlement is made, I now give you notice, that I look to you, and hold you responsible, for one-sixth of one hundred and forty thousand dollars, the money that will be thrown away or given to the Kennedys.

Notwithstanding their abuse and endeavors to ruin me, I am willing to do what is right, and no reasonable man can say that under all the circumstances we ought to take less. I have no fear of awaiting the result, and the courts and the law to determine it. I have surrendered one-half my rights to you and another half to the Kennedys. In my judgment it is not right, and I will not do it. If they do not promptly accept to pay for what has been sold with interest, and immediately surrender the property, I propose to increase the fee of Mr. Campbell and Chandler $10,000, and go on and make out the account, and abide the result. I know the wish of these gent. is to do what is right, or what they consider right, between all parties. Still I must determine on my own right for myself.

After laboring 12 years, &c. &c., then for me to be left in the mercy of, and surrendered into the hands and power of the enemy, I will not submit to it. We ought not, if the case cannot be compromised on the terms above spoken of, expect or require Messrs. Campbell and Chandler to go into making of the account without remuneration. The enemy are in our hands; let us deal fair and honorable, and require of them to do the same.

"A conquered foe has no right to dictate terms to the conqueror." There may be persons in the Western country who have claims equal, if not superior to yours, to this property. If my rights are not respected by you, I shall use every honorable means to secure them.

I am respect., &c., WM. D. PRIMROSE.

Mr. SIDNEY E. COLLINS, Mobile, Ala.

MOBILE, May 19th, 1851.

JOHN A. CAMPBELL, ESQ.:—

Dear Sir: On the part of S. E. Collins, we agree to relinquish the ten thousand dollars, and have deeds for all the lands south of St. Anthony, east of Royal, north of St. Louis, and letting the decree stand. Respect., your ob't serv't,

WM. D. PRIMROSE.

MOBILE, July 2d, 1851.

MESSRS. CAMPBELL & CHANDLER:—

Sirs: Col. Hallett and myself have agreed on the following terms, to wit: The defendants to deed all south of St. Anthony from Royal

to the river, and are to convey me the lot north of St. Anthony to State Street, and east of Royal to Hall & Carter's cotton shed, both parties relinquishing all claims in the matter of accounts, &c.

Defendants to pay all costs of suit, for which you will please prepare the necessary deeds and papers, and oblige your friend,

SIDNEY E. COLLINS.

Here follows letter from S. E. Collins to J. A. Campbell, marked (Confidential), dated Feb'y 8, 1854, and already copied as appended to John A. Campbell's "Statement of Facts." (See page 470.)

Here follows letter from same to same, signed "Yours in Christian meekness." "I think this letter was handed to me in January or February, 1854 (signed) D. Chandler."

This letter is also appended to the "Statement of Facts," and copied (page 474).

Here follows letter from same to same, dated Citronelle, July 6th, 1854, part of which is appended to the "Statement of Facts;" the part there omitted is as follows, and here inserted, to wit:—

"In June, 1851, I brought my family to Mobile. I had no money, and had a wife who was much of her time confined to her bed with sickness, of which I frequently informed Campbell and Cleveland. The winter of 1851 came on; I had no servant to cook or make fires for my helpless family.

I went to C. and C. and told my situation, and asked James Campbell to sign my note at twelve months for four hundred dollars, for which I could get an old negro from Mr. Weeks that could help my wife cook our provisions.

He peremptorily and insultingly refused. Cleveland contracted to sell me an old negro, and wait till I could be in funds from the sale of property, and because the old negro said he did not want to leave him, he (Cleveland) said "that was a knock-down argument with him;" he could not let the old man go, and at the same time he had 15 or 20 negroes in his yard doing little or nothing. This and much more illiberal and unkindness have I received at the hands of these men. * * * *

Cleveland has recently sworn that if I don't give new deeds, he will expose some rascality that you and Primrose done in my suit with Kennedy, and will tell the defendants, and that it will enable them to recover the property back again. What the rascality is, is not known to me, and I have thought that it was mere *gas*, and said to intimidate me. I have ever entertained too high an opinion of you, to think that you would knowingly be engaged in anything unclean." Letter marked "Confidential and private." (For remainder of this letter see page 476, St. Facts, of Transcript), *and whole letter, see page* 1066.

MOBILE, April 25th, 1855.

Hon. JOHN A. CAMPBELL:—

Dear Sir: Mr. Jacob Magee stated to me that you had expressed

to him a willingness to take the notes and mortgage which I hold on him, in lieu of the notes and mortgage which you hold on me. I should be much pleased to make the arrangement with you. Please signify to me your intentions at your earliest convenience, and oblige Yours, respectfully,

SIDNEY E. COLLINS.

MOBILE, May 8th, 1855.

Hon. JOHN A. CAMPBELL:—

Sir: In the settlement of my case with Mr. Hallett, a bond for a large amount, held by him as executor of Joshua Kennedy, against Wm. F. Cleveland, was to be delivered to me. I am informed it was handed to you, as my attorney in the case, by Mr. Hallett, and I now call your attention to it, and request that you will forward it to me without delay. Respectfully,

SIDNEY E. COLLINS.

NEW ORLEANS, 9th May, 1855.

SIR: Your letter of yesterday, inquiring of a bond of Wm. F. Cleveland, in which you say: "I am informed it was handed to you, as my attorney in the case, by Mr. Hallett, and I now call your attention to it, and request that you will forward it to me without delay *delay*," has been received. My reply is, that when the gentlemen interested in the judgment of which you were plaintiff, including yourself, came to their settlement with Mr. Hallett, they applied to me to prepare the papers, or to superintend their completion. Among the terms I was informed of, there was one that an ancient bond of Wm. F. Cleveland to Joshua Kennedy, was to be cancelled and returned to him. I applied to Mr. Hallett, who assented that such was the agreement they had entered into, produced the bond, and the necessary cancellation was then made.

Such is my recollection, and the bond surrendered at that time to Mr. Cleveland, as I was advised it was proper to do.

With due respect,

J. A. CAMPBELL.

Commissioner's Certificate as to proof of the foregoing Papers to wit:—

"These seven sheets contain the copies of letters signed by Sidney E. Collins and Wm. D. Primrose, with one reply of the witness. The originals of the letters of the said Collins and Primrose are produced by the witness, and the signatures proved to be their genuine signatures. The witness stated that the body of each of these letters he believes to have been written by said parties, except the letter dated February 25th, 1851, signed by Collins; that the said letter, and the accompanying accounts, are in the handwriting of Drury Thompson. The witness states that the envelops in which that letter and the letter of the 8th July, 1851, were inclosed, are either lost or mislaid, and are not in his possession. The original

letters are in my possession, and are subject to the use of the court at the hearing; the witness objecting to a surrender of them.

R. B. OWEN, *Commissioner.*

Letter from Sidney E. Collins to John A. Campbell, Esq., attached to said Deposition, and referred to on page 474 (*Statement of Facts*).

In order that you may understand the condition of the parties, I have given you statements of the value of the estate of Joshua Kennedy in the City and County of Mobile. Also, statements of expenditures made by Kennedy on the property recovered, amounting, with interest, to $48,472 00. Also, a statement of rents, &c., with interest, on the property south of St. Anthony Street, amounting to $172,800 00. Also, a statement of the amount received for sales and interest above St. Anthony Street, say $65,252. You will observe that, after deducting the expenditures, there remains a balance of $189,580 00.

These estimates can be relied upon in the total as correct. Variations in one way will be offset by variations in the other. You can take them as a basis to guide you, when you receive their proposition. I will consider it, and consult and advise with you.

Respectfully, S. E. COLLINS.

To JNO. A. CAMPBELL, Esq., Feb. 25, '51.

Rents and Profits.

Rents of stores from 1834, 16 years,	$12,800 00
Interest on do.,	5,120 00
Sale of lot to Campbell & Cleveland,	10,000 00
Interest, 15 years,	12,000 00
Vacant lots and little shanties,	10,000 00
Interest on do.,	4,000 00
Lots woodyard, East Commerce, 5 years, @ $1200,	6,000 00
Interest on do.,	1,200 00
Rent of upper wharf from 1827 to 1850, $2000, 23 y'rs,	46,000 00
Interest on do. (equated),	41,820 00
Rent of lower wharf, 11 years, $1500,	16,500 00
Interest,	7,360 00
	$172,800 00
Rents and profits,	$172,800 00
Improvements,	48,472 00
	$124,328 00
Purchases made by Campbell & Cleveland,	$30,000 00
Interest on do., 14 years,	33,000 00
Purchase by do. in 1833, 700,	700 00
Interest,	952 00
	$65,252 00

Sale to Krebs & Chigazolo.

Balance bro't down,	$124,328 00
Add,	65,252 00
Balance,	$189,580 00

Improvements Made.

Two stores South St. Anthony Street, @ 4000,	$8,000 00
Interest on do. 16 years, @ $640,	9,240 00
Filling between Water and Commerce St.,	7,000 00
Interest on do. 14 years,	7,840 00
East of Commerce Street filled by Kinney on lease of 6 yr's,	
Building wharf in 1827 (upper),	1,500 00
Interest on do. 23 years,	2,760 00
Rebuilding do. in 1832,	1,200 00
Interest on do. 18 years,	1,728 00
Rebuilding do. in 1837,	1,200 00
Interest on do. 13 years,	1,248 00
Rebuilding do. in 1842,	1,200 00
Interest on do. 8 years,	768 00
Wharf in 1839,	1,500 00
Interest on do. 11 years,	1,320 00
Rebuilding do. 1844,	1,200 00
Interest on do. 6 years,	768 00
	$48,472 00
City assessments, 1851,	$391,050
Deduct Collins' claim,	125,000
	$266,050
50,000 acres of land in Mobile and Baldwin County,	100,000
	$366,050

These assessments are very low, and on vacant land not more than half the value, especially when you compare it with the Collins' claim, which is now worth $200,000. The estate, negroes, town property and country, can be placed safely at 450 or $500,000.

Letter from Sidney E. Collins to Hon. John A. Campbell, attached to the foregoing deposition, and referred to page 1058 *of Transcript.*

Citronelle, July 6th, 1854.

HON. JOHN A. CAMPBELL.

Sir: In January, 1851, I arrived in Mobile, from Texas, in bad health and without money; the day that I arrived, I was told by you that some gents wished to see me at your office, on that evening,

which I did, and there learned, for the first time, that they claimed an interest in my property. You or they proposed that you should decide the amount each one was entitled to. You then said two-thirds, and each one would be getting nearly double as much as you were getting. Without any information, explanation, seeing the papers, or having any knowledge what they or any of them had done, except that Primrose had been in some way employed, I immediately signed the papers you made out, giving them two hundred thousand dollars' worth of property, when you led me to believe, from your remarks, that I was giving them less than eighty thousand. As soon as I had time to look into matters, I found that your decision was very unjust towards me. They had incurred no responsibility, and the advance made in the prosecution was paltry compared with the amount you give them. Cleveland done nothing, as I can find, save to bring James Campbell in, by imposing on Primrose and Thompson. As soon as I understood the whole matter, I became dissatisfied, and have repudiated the whole concern, and have given them notice that I claimed the whole property as my own; though I am still willing to give them as much as you represented to me they were getting at the time I signed the papers. I would still be willing to remunerate them well for all they have done for me, but 200,000 is more than I am willing to submit to. I have employed Smith and Chandler to bring suit, to quiet my title. My object in thus frankly addressing you, is that you would try and have the matter settled without getting into law.

I am willing to give them 4 stores on Front Street, worth 20 thousand dollars each. This is my ultimatum. If you can have the matter settled on the terms above, I should feel bound to make you a handsome present, in way of a lot to your son.

I am advised, in case I have to bring suit, to make you a party defendant, so that you may answer without being annoyed and insulted by insolent and impertinent questions, that the defendants and their counsel would in all probability propound to you. In June, 1851, I brought my family to Mobile. I had no money, and had a wife who was much of her time confined to her bed with sickness, of which I frequently informed Campbell and Cleveland. The winter of fifty-one came on. I had no servant to cook or make fires for my helpless family. I went to C. and C. and told my situation, asked James Campbell to sign my note at 12 months for four hundred dollars, for which I could get an old negro from Mr. Weeks, that could help my wife cook our provisions and make fires, until such time as I could sell some of my property; he peremptorily and insultingly refused. Cleveland contracted to sell me an old negro, and wait until I could be in funds from the sale of property. And because the old negro said he did not want to leave him, he (Cleveland) said "that was a *nock* down argument with him," he could not let the old negro go; and at the same time he had 15 to 20 negroes in his yard doing little of nothing.

This and much more illiberal and unkindness have I received at the hands of those men.

Thompson, from the first, has all the time sailed before me under false colors, pretending to be my best friend, has proved to be my worst enemy. Primrose, whatever others may say about him, has, from the first, acted (when he could) openly and gentlemanly; and, taking the services of yourself and Chandler out of the matter, he is entitled to more praise, credit, and compensation, than all of the balance put together.

Cleveland has recently sworn that if I don't give new deeds, he will expose some rascality that you and Primrose done in my suit with Kennedy, and will tell the defendants, and that it will enable them to recover the property back again. What the rascality is, is not known to me, and I have thought that it was mere *gass*, and said to intimidate me. I have ever entertained *to* high an opinion of you to think that you would knowingly be engaged in anything unclean.

I hope, my dear sir, that this will be received in the friendly spirit in which it is sent.

Yours truly, SIDNEY E. COLLINS.

To Hon. J. A. Campbell.

Confidential. Private.

Direct interrogatories filed to the said witness on the 19th day of November, 1856. Cross-interrogatories filed 29th November, 1856, with the complainant's objections, which were filed on the same day.

Attest, GEO. E. HOLT, *Clerk.*

The foregoing deposition of the witness, the Hon. John A. Campbell, was taken, subscribed and sworn to, at the city of Mobile, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause, and named in the commission, the said deposition having been commenced on the 19th day of March, 1857, and was completed on the 25th day of the same month.

Filed 7th April, 1857.

Attest, GEO. E. HOLT, *Clerk.*

No. 3. *Deposition of James H. Campbell.*

The deposition of James H. Campbell, a witness on behalf of the defendants in said cause, taken by commission and interrogatory, who being duly sworn, answers and says to the direct and cross-interrogatories propounded to him as follows, to wit:—

Direct Interrogatories and Answers to the same by the said Witness.

1st. Are you acquainted with the parties?

Ans'r. I know all the parties to the suit.

2d. Were you, in February, 1851, present at an interview between the plaintiff and defendants in this suit and Wm. D. Primrose relative to a settlement of their claims in a portion of the Alexander Baudain tract of land? State the time of the day when that interview took place, and all the circumstances of which you were a witness.

Ans. I was present, in February, 1851, at an interview in the office of Mr. John A. Campbell between Sidney E. Collins, the complainant, Drury Thompson, Wm. F. Cleveland, James Campbell, defendants in this suit and Wm. D. Primrose, relative to an adjustment of their interest in a portion of the Alex'r Baudain tract of land at that time recently recovered by Sidney E. Collins in a suit against the representatives of Joshua Kennedy. This interview occurred about 7 o'clock in the evening. A little before that time I was seated reading near the desk of Mr. John A. Campbell, where that gentleman was busily engaged in writing. Messrs. Wm. F. Cleveland and James Campbell entered the office and took their seats near the table in the centre of the room. Shortly afterwards Wm. D. Primrose came in, and, a little later, Sidney E. Collins and Drury Thompson. On the entrance of the first named parties Mr. Campbell turned towards them, passed the compliments of the evening, and then resumed his writing. There was no conversation until the last two came in. On their entrance Mr. Campbell turned his chair towards them, and a conversation ensued relative to the adjustment of their several interests in the property shortly before recovered in the suit mentioned. The conversation was general, and shared in by all the parties. I had continued for only a short time when I heard Mr. James Campbell say that Mr. John A. Campbell was most familiar with all the circumstances, and proposed that it should be left to him to adjust their interests. I was in the act of rising from my seat when this proposition was made, and almost immediately after left the office. I know nothing further of said interview. I can only state that all the parties appeared to have come to the office with the same purpose in view, and with the expectation of meeting each other there.

Int. 3. Were you concerned in the drawing or copying of the deeds executed 15th of February, 1851, and referred to in the bill? If so, state all the circumstances under which that deed was drawn or copied at the office of Campbell & Chandler, and when it occurred. How long was it after the interview just referred to?

Ans'r. I was concerned in the copying of the deeds executed 15th February, 1851, referred to in the bill. The circumstances attending the said copying were as follows: Some days after the evening of said interview I reached the office somewhat later than usual, and found Mr. John A. Campbell writing at his desk. In a few minutes afterwards Mr. Campbell came to me, and, handing me the paper which he had been writing, requested me to make three fair copies of it. I seated myself at the table near the centre of the room and began to make the copies. While engaged upon the second copy, Sidney E. Collins, the complainant in this suit, entered the office, and had approached half way between the door and the desk of Mr. Campbell when Mr. Campbell turned towards him, and, glancing at me, said they were not quite ready, and requested him to come in again in about an hour. Collins then left the office, and I continued

making the copies. I found, on completing the third, that one of them was faulty, and I drew another. On completing that I burned the faulty copy and the original draft. During this time, and before commencing the fourth copy, I handed one of the papers to Mr. Campbell, and suggested the insertion of the word "of" in one of the lines. Mr. Campbell interlined said word in one of the copies, and I, as I remember, did the same in the other. The fourth copy had the said word regularly written in the text. Some time after, Sidney E. Collins again entered the office, Mr. Campbell arose from his seat, took the three copies from me, and handed them to Mr. Collins, who then left the office with them in his hand. This occurred on the morning of Saturday, the 15th day of February, 1851. The said three copies were written by me, with the date of that day. Collins took the said deeds from the office about 12 o'clock of that day. I cannot state with exactness the day of the interview, nor how long after it the transaction above narrated occurred. I do know, and positively, that several days had intervened between said interview and said 15th February, 1851.

Int. 4. What was done with the first draft of that deed, and what was done with the copies prepared by you? Have you seen those copies since that date? Where are they now, and in what condition?

Ans'r. As I have already stated, I burned the original draft handed me by Mr. Campbell, and also one of the four copies prepared. The other three I handed to Sidney E. Collins, as answered to last interrogatory. Since that date, have seen two of said three copies, one of them frequently, in possession of James Campbell, one of the defendants, and my father. The other I have seen in possession of Drury Thompson, another of the defendants, since the institution of this suit. I have carefully examined both of those papers; they are in my handwriting, and are two of the same papers described in my answer to last interrogatory, as made by me on February 15, 1851, and handed to Sidney E. Collins, and are the deeds of which Exhibit A to the bill purports to be a copy. They are in the same condition as when they left my hands, with the following exceptions: First, a covenant by Sidney E. Collins, to obtain relinquishment of dower from his wife, added after the date and the words "executed in triplicate," added to the deed and to the under-written acceptance and obligation. These additions are in the handwriting of Drury Thompson. Second, the signature of Sidney E. Collins to the deeds, in his own proper handwriting, and the signatures of Drury Thompson, William F. Cleveland and James Campbell to the said under-written acceptance and obligation. And third, the acknowledgment of all the parties taken before William Brooks, Notary Public, and the indorsement of the record clerk upon one of them. The third copy I have not seen since it was taken from the said office, on the 15th of February, 1851. I suppose it to be in the possession of Sidney E. Collins.

Int. 5th. Do you know what were the personal relations between the members of the firm of Campbell & Chandler and the defendants Cleveland and Campbell at that time? Was there any relationship or intimacy among them?

Ans. There is no relationship between either of the members of the firm of Campbell & Chandler and Campbell or Cleveland. I have had every opportunity of knowing the personal relations between said firm, and either of them, and Campbell and Cleveland, since the fall of 1849 to the present day. Their relations have been far from intimate, beyond ordinary courtesies. James Campbell has been and is almost a stranger to both Messrs. Campbell and Chandler, and the degree of intimacy between them and Wm. F. Cleveland is not much closer. I do not remember ever to have seen Mr. James Campbell in the office of said firm, but on the occasion of the interview mentioned. On first entering the office of John A. Campbell, I either introduced myself or was introduced by Mr. Chandler to that gentleman. My position as a student in that office was obtained, not at the request of said James Campbell, but by the kind offices of a mutual friend of Mr. John A. Campbell and Mr. James Campbell. I further answer, that the personal relations between Wm. F. Cleveland and the members of said firm, or either of them, are and have been by no means intimate.

Int. 6. Do you know or can you set forth any other matter or thing which may be benefit or advantage to the parties at issue in this, or either of them, or that may be material to this the subject of your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I answer to this interrogatory, that I have in my custody a number of letters which I believe to be material to the matters in question in this cause, and which I believe may be a benefit or advantage to one or the other of the parties at issue. I append said letters to my answer of the interrogatory. They are twenty in number, and are marked with the number from 1 to 22, inclusive. I am familiar with the handwriting *writing* of Sidney E. Collins, the complainant in this cause, and I state that the body of said letters are in the own proper handwriting of said Sidney E. Collins, and further, that the signatures attached to each and every of said is the signature of said Sidney E. Collins, and in his own proper handwriting. I cannot answer or set forth any other matter or thing save what will be stated in my answers to the cross-interrogatories.

Ans. to Cross-Interrogatories.

Cross-Int. 1. Please state whether you are related to any, and which, of the parties, and what that relationship.

Answer. I am the son of James Campbell, one of the defendants. I am not related to any other of the parties.

Cross-Int. 2. In whose office did you study law, and during what years?

Ans. I studied law in the office of Mr. John A. Campbell, of the firm of Campbell & Chandler. I entered said office in the fall of 1849, after leaving the law school at Cambridge, Mass. I continued the study of the law in Mr. Campbell's office until May, 1852, when I was admitted to the bar.

Cross-Int. 3. Since you commenced the practice of the law, has any one occupied an office with you, and who does still?

Ans. After my admission to the bar, I practised law in the office of Mr. John A. Campbell until the spring of 1853. At that date Mr. Campbell and myself removed to an office on St. Francis Street. We retained that until the following fall, and then removed to an office on Royal Street, which we have since retained.

Cross-Int. 4. When Judge Campbell is in Mobile, does he not occupy or use the same office with yourself, and have you not acted as his agent?

Ans. When Judge Campbell is in Mobile, he does occupy the same office with me, and has ever since his appointment to the bench of the Supreme Court of the United States, in 1853, in the spring. I have, and still do, in many instances act as the agent of Judge Campbell, and have attended to a part of his business interests during his absence from the city. I suppose that counsel wish to establish the existence of intimate personal relations between Judge Campbell and myself. I will simply state that while I was a student in the office of Mr. John A. Campbell the relations between us have been the most intimate, of preceptor and pupil. Since my admission to the bar these relations have been drawn still closer. I have experienced much kindness at the hands of Mr. Campbell, and set high value upon his friendship. In a word, the relations between Mr. Campbell and myself are and have been very near and very grateful to me. I further answer, that while I was in Mr. Campbell's office, during the existence of the firm of Campbell & Chandler, my law practice was always separate and distinct from theirs. Since Mr. Campbell's appointment to the Supreme Court, I have been practising law in the city of Mobile, in my own office; and during the visits of Judge Campbell to the city, he has temporarily occupied a desk in that office, for convenience in attending to the business of the Court and to his own private matters here. During these visits, Judge Campbell has had no connection with my own professional business.

Cross-Int. 5. Did you not, immediately after the bill in this suit was filed, procure a copy and forward it to Judge Campbell, at Washington? And did you, subsequently, receive his written statement in reply to it, and when?

Ans. As speedily as possible, after the filing of the bill, I ordered a copy to be prepared, in order to forward it to Judge Campbell. I would have been wanting in the most ordinary feelings of friendship, and negligent of the most common sense of justice, had I left Judge Campbell an hour or a moment ignorant of the hideous charges inserted against him in the bill. No dread of the result of this case,

and no idea of defence or preparation for it, prompted my action. I was shocked and astonished at the charges in that bill, and, however fictitious and monstrous they might be, and were to my mind, my first impulse prompted the necessity of an immediate refutation and denial on the part of Judge Campbell to the community. That copy was sent to Judge Campbell, by Mr. Daniel Chandler, at the earliest possible date. I did not receive Judge Campbell's written statement in reply to it. That statement was sent to Mr. Chandler, and was received by him, as well as I remember, in the latter part of January or early in February, 1856.

Cross-Int. 6. Was said written statement shown to the defendants, or any and which of them, or was it read by them, or any and which of them, and when?

Ans. The statement was shown and read to James Campbell, one of the defendants. It was read to him by me, after I had procured from him all the facts stated in his answer as of his own knowledge. It was withheld from him until that time, not from any motives of delicacy, nor from any idea that he was fully entitled to see it, and to refresh his memory from it. As the professional adviser of said defendant, I would have consulted my duty by first reading the statement to him. As his son, and as the friend of Judge Campbell, I preferred to, and did, first procure and commit to writing every fact as stated of his, defendant's, own knowledge in said answer, as now on file. I well remember defendant's indignant response to the charge of collusion between himself and Judge Campbell, "that he had never spoken with Judge Campbell in relation to the Collins suit, or his interest in the property, but once, and that on the night of the interview in Mr. Campbell's office." I did not read that statement to any of the other defendants, nor do I know that it was read by them. I have some recollection of having read some paragraphs in said statement to Wm. F. Cleveland. This might have been before the filing of his answer. This reserve on my part was in accordance with my whole course in the matter, and my uniform use of said statement. It was prompted by a very earnest desire to learn the whole history of the matters alleged and narrated in the bill, from the individual recollection of each of the defendants, for my own personal satisfaction.

Cross-int. 7. Was said written statement in the hands of the solicitors, Messrs. Chandler, Smith and Herndon, or either of them, and when, and how long?

Ans'r. Said statement was for a part of time in my hands—sometimes in the hands of third persons; but was, from the date of its receipt, until the 15th of June, 1856, for the most part, in the keeping of Chandler, Smith and Herndon.

Cross-int. 8. Was the answer or a draft of the answer of James Campbell, or any part of it, shown to Judge Campbell, or read to him, or was he consulted with regard to it, or any part of it, before said answer was filed?

Ans'r. The answer of James Campbell was prepared prior to the arrival of Judge Campbell in Mobile. It was afterwards shown to and read by him. His opinion was asked in reference to it, and that opinion was that it was a very complete answer to the statements of the bill. He suggested that its different parts should be rearranged and adjusted better to the order of his written statement, which he wished to have appended to it as an exhibit. On this suggestion it was so rearranged and rewritten by me. This occurred before the filing of said answer.

Cross-Int. 9. Has not Judge Campbell interested himself for the defence in this cause? State all that he has done, or advised, calculated in any manner, to aid, benefit, or shape the defence.

Ans'r. I do not that Judge Campbell, strictly speaking, has interested himself in the defence of this cause. His efforts and his aim have been to free himself from the foul charges contained in the bill. In so far as a vindication of his own conduct, and the using of every honorable means towards that end have turned to benefit, or aid the defence and to free the charges in the bill, Judge Campbell has been warmly interested in the defence. After the copy of the bill had been sent to Judge Campbell, I received a letter from him from Washington, requesting me to make diligent search among the papers in his former office, for all letters addressed to him by Sidney E. Collins, William D. Primrose, Wm. R. Hallett and Mr. John Sergeant. On searching the said office, I found in the proper depositories, the following described letters: Three from Sidney E. Collins to John A. Campbell, dated respectively, June 15, 1845, August 9th, 1849, and June 24, 1850; one from Sidney E. Collins to John A. Campbell, dated 25th February, 1851, and inclosing within it a statement of the back rents of the Collins property, and an account to be taken against the Kennedys; one from Wm. D. Primrose to Sidney E. Collins, dated February 26, 1851; one from Wm. D. Primrose to John A. Campbell, dated May 19, 1851; one from Sidney E. Collins to Campbell and Chandler, dated July 2, 1851; and one from John Sergeant to John A. Campbell, dated April 26, 1851. I have recently seen said letters and papers in the hands of Richard B. Owen, with whom they have been left, to be produced at the hearing of this cause, and copies of which I understand to have been attached to the deposition of Judge Campbell. They are in the same condition as when found by me, except that they have been marked with the number 1, 2, 3, 4, 5, 6, 7 to 12, respectively, in the order above written. I, at the same time, found in the office of Campbell and Chandler, a letter from Wm. R. Hallett, Esq., to John A. Campbell, dated 14th day of May, 1851. Since my return to Mobile, I have made diligent search for said letter, but have been unable to find it, and believe the same to have been lost. Said letter is the same referred to in the statement of Judge Campbell. So soon as found, I sent copies of all said letters and papers to Judge Campbell, at Washington. In further to this interrogatory, I state

that I have procured other papers for Judge Campbell, at his request. I have received also from him the names of witnesses to be examined concerning different parts of this case, and suggestions in relation to their evidences. The shaping of the defences in this cause has been under the control, and has been managed by Messrs. Chandler, Smith and Herndon.

Cross-Int. 10. Did you not prepare a deed, of which Exhibit H to the bill is a copy, to be executed by the complainant, Mr. Collins?

Ans'r. I did prepare a paper, of which Exhibit H to the bill purports to be a copy. I did not prepare said paper to be signed and executed by Sidney E. Collins, but to be signed and executed by the defendants in this suit, to Sidney E. Collins, for his protection. This paper had entirely passed from my recollection, until, on recently returning from a ten months' absence from Mobile, I found that this cross-interrogatory had been propounded to me. I suppose this to be owing to my entire misconception of the nature of the paper, arising from the description of it in the bill. On refreshing my recollection in every possible way, and endeavoring to recall every paper that I had ever drawn for the parties, the preparation of this paper recurred distinctly to my memory. I prepared said paper under the following circumstances: In June, 1852, Sidney E. Collins came to my desk in the office of Mr. John A. Campbell, stated that he had sold to Messrs. Dorrance and Sons, the property on the northwest corner of St. Louis and Water Streets; and requested me to prepare the deed and mortgage. He at the same time instructed me to prepare a paper to protect him against the whole warranty on the sales of that and any other portions of the Collins property. Mr. Collins came alone to the office. I had no conversation with any of the defendants, nor with any other person, either at that time or before, either in reference to this or the Dorrance papers, nor to the form in which they were to be drawn. They were prepared at the sole request of Sidney E. Collins, the complainant, and when ready were taken away by him. These three papers were drawn while I was practising law wholly on my own account, and were included in one charge, as "deed, mortgage and indemnity bond," against Sidney E. Collins. My charge for these three papers were paid under the following circumstances: I met Wm. F. Cleveland and Collins on the pavement on St. Francis Street, and asked Collins for payment. He answered he had no money. Mr. Cleveland asked what it was for, and when informed by Collins paid my charge in Collins' presence.

Cross-Int. 11. Was not Mr. Collins requested to execute said deed (original of copy H,) referred to, and did he not refuse to execute it?

Ans'r. Said deed was not prepared to be executed Sidney E. Collins. It was made at his request, to be signed and executed by the other parties to him. I have never heard of his having been requested to execute it, nor of his refusal to do so.

Cross-Int. 12. Was not the complainant requested to sign said deed, or some such deed frequently, and as late as in 1853 or 1854?

Answer. I have already answered, that I have never heard of complainant's having been requested to sign said deed, nor any such deed. The solicitor who wrote this cross-interrogatory, surely has never read either Exhibit H or its original. At the time said deed was prepared, I had never heard the slightest intimation that the defendants, or any of them, desired any new deed, nor any ratification of the old one. I was then, and always have been, under the impression that the whole matter had been completely settled by the deed of 15th of February, 1851. If there was any desire for new deeds, it must have been a desire very studiously kept from my knowledge.

Cross-int. 13. Do you know that James Campbell and Wm. F. Cleveland wanted Mr. Collins to execute a new deed in place of, or in addition to that of February, 1851? Have you not heard both or one of them speak on the subject?

Ans'r. I have no knowledge of any wish on the part of James Campbell or Wm. F. Cleveland at any time to have Sidney E. Collins execute any new deed in place of, or in addition to that of February 15th, 1851. I have never heard either of them mention the subject.

Cross-int. 14. Why was the deed of 15th February, 1851, suffered to remain so long unrecorded?

Ans'r. I do not know why said deed was suffered to remain so long unrecorded.

Cross-int. 15. Was not the deed of February 15th, 1851, put on record as soon as it was ascertained that Mr. Collins would never make any other? And was it not kept from being recorded until about the 16th day of December, 1853, in hopes that Mr. Collins might execute a new one in place of it?

Ans'r. As already stated, I have never heard of any intention or wish, save from the bill, on the part of the defendants to have a new, or another deed than that of February 15th, 1851, executed by Collins, nor of any request on their part, or either of them, nor refusal on that of Collins, to make another, or new deed. I do not know why said deed was kept from being recorded until December, 1853. I have never had any reason to suppose or believe that it was from the cause here intimated.

Cross-int. 16. Please refer to and describe all the deeds you have copied or drawn for Sidney E. Collins to sign. Give the names of the parties and the dates.

Ans'r. The only deeds that I can remember to have drawn, to be signed by Sidney E. Collins, were the three bearing date February 15th, 1851, as more fully described in my answer to the third direct interrogatory; and the deed to Dorrance, mentioned in my answer to the 10th cross-interrogatory, and made in June, 1852. The grantors in that deed were Sidney E. Collins and wife, and the parties to the confirmation were Drury Thompson, William F. Cleveland, and James Campbell. The grantees were Dorrance, Macy, and Par-

ker, of the firm of Dorrance & Sons, of this city. Its date 16th June, 1852. I do not remember to have drawn, prepared, or copied any other papers for the signatures of Sidney E. Collins.

JAMES H. CAMPBELL.

Exhibits.

Here follow exhibits to said testimony, to wit: letters 22 in number, endorsed "R. B. Owen, Com'r," to wit:—

Letter No. 1, *attached to James H. Campbell's deposition.*

Mobile, May 15th, 1855.

WM. F. CLEVELAND.

Sir: I perceive by a notice of protest, which I have recently received, that you have indorsed, with the names of Collins and Cleveland, a note given last summer by Eckford & Weaver, for rent of a portion of my property. This you had no authority to do, and I am surprised that you should so have used my name. The authority given by me to Cleveland and Campbell, by my letter of attorney, bearing date in July, 1851, as well as that to which I was a party in December, 1851, which was executed by me in ignorance of my rights and of the frauds perpetrated on me, of which you are well aware, were intended as temporary, and have been long since revoked, and must have been so understood by you. The first was in force only during my absence from the State, and the letter you must have considered as at an end more than a year ago; and you acted without authority in renting any of the property in the name of Collins and Cleveland, or in taking notes in that form; and I hereby notify you not to use my name in any manner, or for any purpose whatever, as there is a controversy between myself and you and others in regard to a two-thirds interest of said property. I now propose that any notes or securities taken heretofore in the name of Collins and Cleveland for rents thereof, shall be deposited in the Savings Bank of this city for collection, and that notes or securities to be taken for rents of the property for the next year, to be taken payable to the cashier of said company, and that out of the rents collected, or to be collected from the whole property, the liabilities heretofore created by me, or in the name of Collins and Cleveland, for insurance, taxes that have or may accrue, attorney's fees, and for improvements, shall be first paid out of said collections; and that two-thirds of the remainder, after discharging such liabilities, shall remain on deposit in the said Savings Bank, to abide the result of a settlement between us, whether by suit or otherwise. This proposition is not to prejudice in any way the rights of either party, but is intended for the benefit of both. Such an arrangement will obviate the objections and much of the expense of a receiver. An early reply is desired. Respectfully,

SIDNEY E. COLLINS.

Letter No. 2.

ounty, February 25th, 44.

[torn off] a week of hard work I embrace the oppor (when Sabbath morning affords) of complying with your request and my promises of informing you concerning the death of my brother. He deceased at one James Woods, in Evansville, Arkansas. The letter informing us of the same, bears date March 25th, 1841, signed Andrew Coltharp. Coltharp spoke of coming to Texas, and promised to bring what papers and other articles my brother had with him, and it would seem that Coltharp is the person who was or is in possession of the papers. We have heard nothing from him since, or the papers. You mentioned something of your intention of selling your stock of cattle at home, and investing the same in Texas cattle. Should you still be of the same opinion, the sooner you could forward the money the better. I have made some inquiry about the price of stock here, and I find an opportunity of purchasing a stock of about 250 head, at $2.00 per head. The stock I am well acquainted with, and can pronounce them as fine cattle as there is in Texas. The holder of them is a young lady, Miss Self, who is the only heir to the estate of her father, and she wishes to leave the country for Tennessee, where connections live (having none in Texas). I think them a good bargain. My wife and mother received your presents per Mr. Martin, and return you their compliments and thanks. Big Betsy sends her love to her old master; says that she is well satisfied in Texas, only shot her a few time kill some goose. I have had no deer hunting since you left. Mr. J. C. Martin says his health is improving fast, and will be ready to go with you to San Antonia. Remember me to Mr. Primrose, and say to him that I am forwarding my business as much as possible, so that I may travel with him when he comes. Hoping to see you both here in my next. I close my epistolary nonsense. Your friend and obedient serv.

P. S. Monday, 26th. Since writing the abov [torn off] hav letter informing us of my brother's death, a part [torn off] ich I will copy: "Washington City, Ark., March 25th, 1844." (After informing her of his death, &c., the writer adds:) "but he has some clothing and a trunk here, and great many papers, consisting of notes and accounts, and receipts, &c., which I will take care of until I come to Shrivesport, which will be about 2 or 3 months at the furthest. His trunk and clothing I will put on a boat, and send home the opportunity that I can get. He died at Mr. James Woods, who lives in the Cherokee nation. If you wish to send for his coffin, you will find it there about fifty miles above Vanburen. He was decently buried. So I remain your friend, &c."

ANDREW COLTHARP.

[Torn away] James Woods

How I got the idea that my brother died at Evansville I know

not, but it must have been from some other source than the letter alluded; for I find filed among my papers a memorandum which I copied in the first part of my letter.

If your brother should come to Texas, and should wish a partner in business, and you should think me capable and a suitable person to be in business with him, you will confer a favor by mentioning the same to him. Yours, &c.

Addressed to D. Thompson, Esq., Mobile.

Letter No 3.

Galveston, 6th May, '45.

My Dear Friend: I arrived here last evening in good health, and here met a letter from my wife informing me that all was well. I had a pleasant passage, though I think the Capt. of the New York drinks too much brandy, for the safety of his passengers, though I arrived safe, and should not complain. I find the people warm for annexation; many wish to be annexed immediately, that they may help you fight for Oregon. The people have concluded to wait until the 16th of June and see what Congress will do. There is no doubt but that ⅞ths of the people are in favor of annexation. Genl. Sam'l Houston is now in Galveston, and is on his way to the United States; he is perfectly neutral upon the subject of annexation. He says the people will have their way, but God knows what will become of them. If you should think fit to send me that runaway negro of yours (when you ketch her) do so, and you can make your own charge for her. My family is greatly in need of such a one. Tell Prim that I will be prepared with a horse for him to ride and see his Dexter lands; he must bring money enough for our expences.

Your affectionate friend,

SIDN. E. COLLINS.

Tell Primrose to let me know what has become of my friend, John G. Akin.

Letter No. 4.

Liberty, August 1st, 1845.

Dear Drury: I have just seen Mr. Blanchet concerning the amount he owes Mordecai; he says he has no other means to pay his debts but in lands in Texas; he has instructed me to say to you and the doctor that he would like for you to trade for all the debts he owes in Mobile, and he will pay them in the best of Texas lands. He is very desirous to have them settle that he may go to Mobile in safety. He has not abandoned his land claims in Mobile, and he wants you to assist him in his business, and if it stands just as he says it does, I have no doubt but that you could make it profitable to engage with the old man; he has many papers and documents, some of which I have examined. He gave me a schedule of his debts in Mobile, but I have misplaced it. I think he said he owed Trown and Marshal 1,000, which is in the hands of Hull, and Mor-

decai's amount, and some others of small magnitude. I am afraid you were beaten for the office of clerk, or you would have written to me before this. I have not had a line from you since May; this is the 3d time I have written since I have had a line from you. I desire to hear from you often; your letters seem to interest me, and truly they do; but I say that I want them to interest me more. I want to hear you say that you have sought Jesus Christ in the remission of your sins, and that you have found him precious to your soul. My friend, I could say much to you upon this subject, but for fear of offending, I will merely say that you are a dying mortal, and must exist beyond the grave, and Jesus Christ asks you, Why will you die? the church is calling you; the Christian world is calling you, and your humble friend asks you in the name of God to turn and seek the salvation of your precious soul. May the saving grace of Almighty God rest and remain with you forever and ever, is my prayer, for Christ sake. Write to me frequently, my dear friend—if not upon religious subjects, concerning our business. It seems that I desire to hear from. I think I would like to be in Mobile at the trial of my suit. My wife's health is very delicate—myself and child (thank God!) enjoy good health.

Yours affectionately,

SIDN. E. COLLINS.

Letter No. 5.

August 18th, 1845.

REPUBLIC, OR STATE OF TEXAS, *Liberty County.*

DEAR DRURY: I expect that you have had such warm times in your electioneering that you have forgotten to write as you promised in your last of the 27th May (I think), since which time I have not heard from Mobile. I wrote to you and Campbell about the 12th of June, which I hope have reached you; the one to Campbell contained the statements of Mr. Lanier; for fear they have not reached you, I state, in substance, from my recollection, what the old man says. He says, that in 1828, Joshua Kennedy proposed to him to join Kennedy and defraud us out of that property. Lanier refused; and then Kennedy said that Wm. E.'s heirs had a better title than Collins, but he, Joshua, would give us something for the sake of preventing a law suit. He is quite full and to the point in this matter. My object in writing this is to hear whether you got the last, and whether you think we can avail ourselves of Lanier's testimony. I think it would be of advantage in the suit. We could take him to Mobile if thought necessary. Another object is, to let you know that I am well, and have had the best of —— since I returned from Mobile. My family, that is, my wife, is in bad health, as most females are in her situation. My child is in good health, and I think if you could see her you would say she is prettier than Lizer ——. My mother has been quite sick, though she is better at this time; the health of our neighborhood is tolerably good. I

am glad to say to you that a great change has taken place in the morals of our neighborhood within the last six months. Many have joined the Methodist church, and I and my wife among them, and all I regret is, that I did not commence serving God sooner. Though, fortunate for me, he that came in at the 9th or 11th hour receives as good wages as he that comes in at first; and I thank my Maker that He gave me strength and resolution to turn from the error of my ways.

If you think of visiting Texas this fall, come about the 16th of October, at which time our camp-meeting commences, near Liberty. You could just as easy get religion in Texas as any place in the world. Let me hear from you often; the election being over you will have more time to write. Give my respects to all inquiring friends, and accept for yourself the respects and love, my wife and myself.

SIDN. E. COLLINS.

Letter No. 6.

LIBERTY COUNTY, *Texas*, November 3d, 1845.

MY DEAR FRIEND: I take the present moment to write. This will inform you that I am well; my wife has somewhat regained her health, though she is delicate, as most females are (when childbearing). I trust this may find you in a better state of mind than when you wrote me last. I complied with the instructions as near as was in my power, and forwarded them. I had not time to write to accompany the interrogatories; I thought when I started the interrogatories that there was very little hope of their reaching in time (all the steamers having left the line between Galveston and New Orleans). I have received nothing from Mobile since you wrote, just after the election. By Campbell I was informed that the trial would be in the latter part of December; my intention is to be there at that time; I want to leave Galveston about the fifteenth of December. If you are not too hard run send me, say $50, to the care of Thos. Bates Drury; that matter used to engross the most of my attention; in fact, my whole mind; but, I can say this morning that it has a small share of my thoughts. I thank that hand, from whom all goodness flows, that my mind is this morning heaven-ward bound, in search of things Divine. When I look back to the time we took the parting hand (on board the steamer Creole), we were both engaged after the things of this world; to what shall I compare us? I will say we were like the mole, constantly digging in the earth as after earthly things, and never once turning our eyes to that God who gave us being, and before whose dreadful bar we shall have to appear and give an account for our stewardship here on earth, and account for the talent God has given us, whether we have improved it to the salvation of our immortal souls, and to the glory of God; or whether we have done as the unprofitable servant, hid our talent in the earth. The religion of Jesus Christ is no fit of fanaticism. I thank my God that I have the evidence of my sins being forgiven,

and of my acceptance with God, and that I can say with St. Paul, in 2d Corinthians, 5th Chapter and 13th ver., read the whole chapter and you will better comprehend me. I would say, dear friend, put off your return to God no longer, and, in the language of the poet, Come in this moment at his call, and live for Him who died for all. You are aware how old I am; I can say that the only regret I have is, that I did not seek the pardon of my sins sooner; I might have made myself more useful in the cause of Christ, though I thank Almighty God that He gave me grace to return at all; though my soul is turned from earth and sensual things, and is soaring to that being from whence it came, I find myself but a child, and know that I cannot attain to that degree of Divine knowledge or grace that I might have attained to had I have turned my thoughts when young; then I would say (my dear friend, for I am aware that if I ever had a friend among mankind you are he), in the language of my master, Jesus Christ, Seek ye the kingdom of heaven first, and all else will be added unto you; you have fearful responsibility resting upon you; you are required, as a parent, to raise your children up in the fear and admonition of the Lord, and I fear you will not be able to do it in an acceptable manner, unless you have the love of God in your heart. Give the above thoughts a serious reflection. You know, Drury, I am no person for vague fancy and speculation. I would advise you: Search the Scriptures, for in them ye have eternal life; they will show your duty. Give my respects to all inquiring friends, and accept for yourself the prayers of your devoted friend. SIDN. E. COLLINS.

We had a camp meeting in our neighborhood last week, at which fifty-eight joined the church and 36 were converted. I am constrained to cry out with the Psalmist David, "What is the Lord doing for us!" S. E. C.

Letter No. 7.

Liberty, Texas, May 21st, 1847.

DEAR DRURY: I am just in receipt of your favor of the 21st April. I wrote to you, some 2 weeks ago, acknowledging the receipt of the four hundred dollars. It seems that your uneasiness in consequence of the irregularity of the mails to Texas, has resulted in my receiving a letter from you that I should not have received from you had it been otherwise. "All things work together for good." I am glad to hear that you are still able to attend to the duties of your office. I would have been pleased to have heard a word as to the health of your children, but I will take your silence as to them, to infer their good health, and will excuse you upon the ground of a press of business. As regards perfecting my land titles there is much uncertainty. In the first place it will be more expensive surveying this season than ever has been. All the men that are idle, are gone to Taylor, and it is next to impossible to get men to work. The Indians are

hostile (particular in the section in which my selections are made) and a small company of men would be more exposed than I feel disposed to risk at this particular time. I am not able to say what disposition I will make of my land matters yet. I am now waiting to hear from my friends at Lagrange, Messrs. Hudson and Col. Thos. Green (not T. J. Green); I expect an answer, or information, in a few days. My own health is very good, never better; my children are quite well; my wife remains poorly, though she seems to be improving as the summer sets in. I begin to have some hopes that she will finally recover her health, though they all be blasted before the end of this summer. Drury, you know sufficiently about me and about my family to be able to suggest what course would be best for me to pursue in future life (remembering to keep in view, at all times, heaven, and happiness hereafter), and I am disposed to think that you feel a deep interest for me. Most persons of your turn of mind would recommend me to the minister, but I (prefer) solicit your advice that I may make the comparison, not that I prefer your course of life in all things to all the ministers with whom I am acquainted, but I know that they are but men like ourselves, and are subject to like passions with us. They might successfully point me "to the Lamb of God that taketh away the sins of the world" and not be able to direct me in my worldly matters as successfully as you would be, not knowing my business as well as you do. That you may know my desire (and the full extent of my desire); it is to live in humble and useful life. I have no relish for the vanities of this life (at least I desire to have none), and in your meditation upon this subject, remember that I shall always wish for you to enjoy the happiness with me. That you may know what I esteem as happiness, it is contentment of mind, "for it is far above rubies and fine gold." I am satisfied that many mistake happiness, and hope to find it in the (many) things of this world, but, I am sure, there is no happiness beneath the sun. Ah! Drury, a few more rounds of the wheel of time, all will be over with us, as to this world. May we be so fortunate as to be elevated "to that inheritance that is incorruptible and that fadeth not away." Suffer me, dear friend, to make one observation as to your duty as a parent. Attend closely to the religious training of your children. I take the position that the truly religious and ignorant person is a better neighbor, better citizen, and more acceptable before God, than the highly educated and irreligious. I do not say, neglect either branch of education, but let the religious training be first attended to, and you can do this best by becoming religious yourself. If the blind lead the blind they will all fall into the ditch together. Just so it will be with you if you try to give religious training, without being religious yourself. Remember the old adage: Example is better than precept; actions speak louder than words.

To attend to this part of your duty, you will perhaps find it necessary to leave Mobile, and retire from the sphere of life in which you now move; and, should our matter turn out to our expectations, you

will be able to locate yourself with a view entirely to the training of your children. I will here remark that my backsliding, while in Mobile, gives me great fear of that place. I found little else "but a form of Godliness" among those who professed to be followers of Christ. But to return to thee. My dear friend, you have confided to your care 5 immortal spirits which will dwell (either in happiness or misery) as long as the duration of God's throne shall stand. And perhaps the whole depends upon the manner in which you discharge your duty to them. Will you not set out to train them up for God. Drury, I am a father, and have thought and inquired much upon this subject, and I know that you must have similar feelings for your children upon this subject, as I have for mine. Dear friend, I feel no duty upon mortal man so mighty, and so solemn as that of parents. May the Father of all truth direct me in this matter. Think you that when you have completed their education (as to this world), that they will be apt to think right as to religion? I think not, for the more you exalt their pride and vanity, the more apt are they to reject the Saviour. Pride is said to be the cause of the first angels' fall from heaven. Take care (and reject the false doctrine of letting children alone to choose for themselves in after years). You are near forty, and have not got your heart right with God, and can you expect your children to do better than their father. I would say, get right yourself and use your parental authority to compel them to do right. Lest I offend with too much, remember that it is from one who hopes to love you better in eternity than it is possible for mortal to love in this world. May the love of the Father be felt in your heart; may you have God's kingdom and His righteousness in your heart.

Your friend,

SIDN. E. COLLINS.

I will appropriate this place to remark that I think you commenced blowing Gen'l Taylor's horn too high up. 2 more such blows will effectually blow the old hero up. Tell Prim that I am looking every moment when I will get a letter from him. Old Blanchett speaks of going to Mobile to attend to his matters. He is anxious to hear what the result of your search into his matters is, and what you have concluded in relation to his proposition. Write me what to say to him.

Letter No. 8.

STATE OF TEXAS, *Liberty County*, July 27th, 1847.

ESTEEMED FRIEND: I am this morning starting with my family to the Sulphur (or Sour) Lake, about thirty miles distant from Liberty, in hope that it will improve my health and my wife's. I have been sick for six weeks, that I have been scarce able to get out of the house, not able to do any business at all. I am at this time something better, I trust. My wife is as usual (sickly). My children are well. There is a good deal of sickness with us, though none fatal

as yet. I am done over with Texas, and as soon as it is in my power I will leave it. I have a strong notion of selling everything that I have in this country for what it will bring, and leave the "diggings." How can a man live in any country where he is sick all the time. You being well acquainted with my prospects, both present and future, I ask you what is most to my interest to do. Your answer to the above inquiry is solicited on two grounds: 1st. My confidence in your good judgment; 2d. And from my sickness (and some other circumstances which I need not name). I have no mind of my own; or, in other words, no mind at all. I have met with exeeeding bad luck this summer. I have lost Big Betsy, or another man lost her in a drunken spree. I sued him for the value of her, and got a verdict before a jury for 40 dollars, not more than half her value—so I count her lost. I think the jury were actuated by the principle—they tried to make the loss equal on both parties. The man was one who was frequently about my house, and hunted with me, and for me. My sickness, with other causes, has prevented me from doing anything with my land matters. I find that it will make no material difference whether I have it surveyed this year or not, the selections and applications that I have made will hold. The money you sent me I have loaned in safe hands, at 1 per cent. a month, though in my sickness I have been compelled to use some of it. I was commencing to improve a place when I was taken sick, that I could get to myself (I have been living in the house with my wife's mother this last 2 years, but circumstances make it necessary for me to get to myself), but this spell has stopped me in my calculations, and has almost disheartened me from ever trying to do anything again. I hope though that the lake will make a change in my health and mind also. I shall remain there a month, and perhaps 6 weeks. On the receipt of this I shall look for an answer—make no excuse for want of time—take time to write to your disconsolate friend. I hope you and your little ones are all in good health. Give my respects to all.

Yours truly, SIDN. E. COLLINS.

Letter No. 9.

LIBERTY, *Texas*, October 27th, 1847.

DEAR DRURY: Yours of the 6th instant came to hand to-day. It afforded me great satisfaction to hear from you. I was fearful that the yellow fever had taken you to your long home. Your situation (or your office) is in a dangerous part of the city, when such diseases prevail. I think you have run a great risk in attending to your office during the time the fever prevailed. Your advice as to my future course of life corroborates with my own notion of things. There is not so much danger of burst in farming as in almost any other business. Your opinion about renting land and hiring negroes to work, will not do in Texas. Improved lands rent too high, and negroes hire high. Had I a place of my own somewhat improved, I could save myself and hire hands. I am preparing for a crop the

next year. I have moved to a place known as Pine Island, about 35 miles east from Liberty. This place has always had the name of being very healthy—it is a pleasant place. I am not able to inform you anything about your man Hunt. I have not heard a word from him (or about him) since I wrote you from Houston last spring. I will write to some friend at Houston and inquire his whereabouts, and let you know. I regret to hear of the death of the Reverend Mr. Lee. But "blessed are they that die in the Lord, for they rest from their labors, and their works do follow them." *Rev.* I hope his place will be filled with a minister as pious and useful as Mr. Lee. I am surprised to learn that Government Street should suffer more than other parts of the city. I was of opinion that it was the healthiest part of the city. Let me advise you to keep out of town as much as possible until the fever abates. My own health is better than when (I) wrote you last. My little children have also got better; my wife is yet poorly. You wished to know what was the chance of hiring negroes in Texas? There is but few to hire, and those that you can hire are not worth their board, unless you are after them all the time. I know of a woman hiring for one hundred and fifty dollars a year, though I can get one for one hundred dollars, but she knows nothing about house-work; so, upon the whole, I think it best to endeavor to get along until you can procure one for me. I have just seen old Blanchet, he wishes to hear from you in relation to his land in Mobile. I told him last spring that you would be down here this summer, or would write to him. Do write to the old fellow—if nothing else say to him there is no chance for him to recover anything. I got the old fellow to give a note for the amount he owed Dr. Mordecai. He would only allow interest at 5 per cent. from the date of the transactions to the present time. I took his note at 2 years after date from 1st Nov. next, with eight per cent. from 1st Nov. next until paid. If the doctor wishes, I will send him the note. The amount, principal and interest up to 1st November, at 5 per cent. interest, according to my calculation, is $\$243\frac{08}{100}$, for which I took his note. I received a letter from Hypolite Morris (Mrs. Lewis's daughter); she is in Houston. She wrote to me to assist her in getting a school in the country, but there is no chance here for her. Your friend, S. E. COLLINS.

Letter No. 10.

Pine Island, Jefferson County, Texas, March 3d, '48.

DEAR DREW: I have not received a line from you since your letter written some time in October (I think about 19th), in which you requested me to attend to getting Hunt's testimony. I rec'd it about the 12th December (as well as I can recollect, not having the letter before me), and in a few days after wrote you in answer to it, that letter I suppose you have got long before this time. I expected you would have written to me in regard to the course I took in that matter. If you got my letter, my reasons are stated in it; if you

have not, my reasons for not taking Hunt's testimony was that I did not think I could get it in time for the Court. I would like to hear when the Court adjourned, and if I was mistaken in my calculation I shall ever regret it, though I acted as I thought best, taking into consideration the condition of my family at that time with my own health. You spoke in your last letter of sending me a negro woman. If you can send me one it will be of great benefit to me, for I am much in need of one. The want of one to wait on my wife prevents me from my own work many times. I hired one for a short time, expecting one from you, and her time is up, and I know of no other that I can hire short of a year, and that at a rate that I fear I should not be able to pay. If you send, direct her to the care of J. & J. Wrigley, at Liberty, or Dr. A. B. Wildman, Turtle Bayou, and at the same time direct me a letter to Beaumont Post-Office, Jefferson County, Texas. I would get the letter sooner this way than to Liberty. Wrigley is well known in Galveston. Since reflecting upon the matter, I will say send her to Dr. A. B. Wildman at Turtle Bayou. It is near time for us to have a hearing from the Supreme Court if we get any this year. Write me immediately on the receipt of this for fear that something has happened to you. If I do not get an answer to this in 4 weeks, I shall write to some friend to know whether you are dead or living. My own health is better now than it has been for several months. I have labored very hard this winter in putting up buildings and preparing ground for a crop for the present year. My children are both in fine health, my wife has improved in her health, though I little expect her ever to get sound, she being so infirm. Give my love to your children, and kiss Liz. for me. Write me what has become of Primrose.

Your friend, SIDN. E. COLLINS.

Letter No. 11.

Galveston, 7th May, 1848.

DEAR DRURY: In haste I proceed to drop you a line in accordance with my letter of the 5th inst., and for fear the mail from Liberty is not in I shall write without much regard to statements made in said letter. I am in better health than it has been usual for me this last 3 years, my children are in fine health, my wife is better, but still weakly.

You say you have a notion to send me Sylvia and Isaac, and request me to state what will be the chances for Isaac to get liquor. I will say there is no chance for him to get liquor where I live, 20 miles being the nearest point where any is to be had. Direct them to the care of Wildman and Chub, Turtle Bayou, Liberty County, to whose place they will find passage almost any day from Galveston. J. T. Daswell, of Galveston, would be a proper person to direct them to at Galveston. In haste, yours,

SIDN. E. COLLINS.

Letter No. 12.

Jefferson County, Texas, Sept. 30th, 1848.

DEAR DRURY: It has just occurred to me that I have not heard from you since the last of March, and this having been a very sickly summer, and many of our fellow mortals have been called to try the realities of another world, though I hope these lines may find you an inhabitant of earth, and filled with that blessed hope of that rest that remaineth to the people of God; for, my dear friend, unless we have that hope (and it grounded upon the atonement made by Jesus Christ) this life is not worth living. I therefore pray the Father of mercies that while you read these lines He may convince you of sin, of His righteousness, and of the judgment to come. I hope also that you are still as fortunate as when you last wrote me in relation to your dear little children, for I can testify to the great satisfaction of having dutiful and healthy children. My eldest is not healthy, though she is seldom confined; she is what you would term puny; though my youngest is remarkable healthy. My wife still remains infirm, though she has not been confined to her bed for some time. My own health was never better, but times are pretty tight with me at this time. Owing to the sickness of my family last spring, I was late in pitching my crop, and the dry weather cut it short, so that I have not made enough to do me, and I have the hire of a negro to pay. I make the above statement of my fix, that I may ask how is it with you, or in other words, can you help me? I conceive it unnecessary to say anything more in relation to help until I have your answer to the above. I wish you would contrive to see or find out whether there can be anything done with the fellow that lives at the place where my father died. Lanier sold it contrary to my mother's wishes, and she never would sign with him. If we can do no more we may get a compromise of something out of him. This you promised to see to when I was with you. What do you think will be the chance for us to get a hearing from the Supreme Court this winter. Let me know whether Campbell and Chandler are still living, and what has become of old Primrose. My wife wishes to be remembered to you. Your friend, SIDN. E. COLLINS.

☞ Be sure to take time to write to me.

Letter No. 13.

THE STATE OF TEXAS, *County of Jefferson.*

December 5th, 1848.

DEAR DRURY: I wrote to you some two months since, to which I have had no return, and not having heard from you since last Spring (March), I have become uneasy about you. Knowing how subject we mortals are to disease and death, and the sickly season having intervened since I heard from you, I am fearful that these lines will not find the person to whom they are addressed; but if they do, they will inform you that I am still living and in tolerably good health;

and my family is also enjoying a tolerably good share of health. In my former letter, I referred to my necessities, and I now repeat that I am in great need of some help in the way of money. I am still due on my land matters, one hundred and twenty-nine dollars, which if I cannot raise, I shall lose some very valuable selections of land; and fifty dollars servant hire. If it will not cramp you to accommodate in this matter, you can, by so doing, relieve my condition very much. In the event that you cannot do so, don't let that influence you not to write to me, for I admit in the outset, that I have no claim or demand upon you, though I make these requests, it is with the confident belief that it will be in my power to remunerate you for your kindness, though aside from a hope of reward, I am confident that if it will not cramp you in your affairs, that I should get the assistance required; but enough upon this subject, and the next subject with me is religion, having sought for and being confident that I know what religion is, I therefore feel authorized to exhort you to seek for that inestimable joy in believing that God has, for the sake of his Son, pardoned your sins. The promises are "Seek and you shall find, knock and it shall be opened unto you." "If any man lack wisdom, let him ask the Father who giveth liberally and upbraideth not." Now as to the manner of coming to the Father, it is laid down in full, in Mark x. 15. You will also find the subject enlarged somewhat, though the same in substance, in Matthew xviii. 3 and 4, and now I have given you the directions as laid down in God's word, the next question is, will you take them. Drury, my dear friend, much depends upon the determination that you come to at this juncture, and I persuade you to resolve to begin the work now—at this moment—for I think you have procrastinated long enough. Drury, you stated to me once, that there was a time in your life that if you had have died, you believe that you would have been saved. Now, if your belief was predicated upon the merits of Jesus Christ, your premises were good, and your conclusions might be good, "for there is no other name given under heaven or among men, whereby men can be saved, only through the name of Jesus Christ; but believing that you were once in the right way, and have through an evil heart of unbelief, departed from the way of the living God." I therefore recommend you to God's word, Jeremiah iii. 12, 13 and 14, wherein you will find that God desires your return, and could I say a word that would influence you to begin the work now, I would *gladly* do it. Drury, it is a *work*, for Scriptures says work out your soul's salvation with fear and trembling before God. Drury, what shall a man gain, though he gain the whole world and lose his own soul? I have heretofore been too modest to address you upon the subject of religion, knowing that it is a subject that will offend most all unconverted men, but I hope you will not become offended with me, "for I could wish myself accursed from Christ after the flesh that you might be saved." (Paul to Romans.)

I will here make a proposition, that I would like to correspond with

you regular upon the subject of religion. Should it not benefit us any other way, it will be exercise for our minds, and that upon a subject that is lawful in the sight of God and man, and such exercise as my mind greatly needs. If you have heard anything from Washington in relation to our matters in that region, let me know it. Answer me forthwith, make no more excuses for want of time. I learn that Taylor is elected President over Cass; I hope he will meet the expectations of the people; but I much preferred Cass; though the will of the majority be done; though I fear Filmore on the abolition question more than Taylor, I am certain of this one thing, that Taylor and Filmore both owe their election to Taylor's gun-powder popularity. My wife suggests that you will have to adjourn the reading of this letter until candle-light. I will therefore close, by subscribing myself, your friend, SIDN. E. COLLINS.

P. S. Address Beaumont P. O., Jefferson County, Texas.

Letter No. 14.

Liberty, Texas, Feb'y 24, 1849.

DEAR DRURY: Yours of the 25th ultimo came to hand this day with a letter that I wrote to my wife from Mobile, dated Jan'y 3d. Though your letter is short, it gave me pleasure to learn that you were only attacked with cold. At the time I left you I was fearful that it might be cholera, and I feared that when I next heard from you it would be that Drury Thompson departed of cholera; but thanks be to God that you are still able to attend to earthly business. Drury, I have a double interest in offering up my prayers for your life to be prolonged; one is that you may be brought to repentance and faith of the Lord Jesus Christ, the other is pecuniary interest, for if your life should be spared for a few years, it will be of infinite advantage to me and my little children, and here let me ask of you to pay strict regard to your health; don't keep so many late hours; for if you do continue to trespass upon the laws of God and nature, it will sooner or later undermine your constitution and bring you to a premature death; but enough of this at present.

I am glad to hear that the Maj. has one opportunity of making a rise, but I fear, Drury, he will find his money (even in California (whisky); but you are his brother, and have done your duty nobly in fitting him out, and though he many times miscarried, he may succeed, and I hope to God he may. The pistols, and gun, and knives were unnecessary as an outfit. I should have had more confidence in his success if he had gone without them. Such things only tend to get men into difficulties, and not out of them, and especially men of quick passions and high tone of feelings; such often act from impulse, and if they are armed at the moment, will do deeds which they would avoid were they not armed. If I were going to California I should take no firearms but those that would serve on the route for killing game for my sustenance. Here I was interrupted to attend my sick wife. She is laboring under a violent attack of fever,

her long standing suppression of menstruation. She has not been right (as the women say) for 3 years, until 2 nights ago, she had a slight discharge, since which time she has had violent fever, without intermission. What it is to result in God only knows. Her physician seems to apprehend no danger. I am though somewhat apprehensive that there is danger. My own health and my children's is good. I am building in the town of Liberty, with the intention of following my trade (carpentering) for the present. Liberty has taken quite a start in the way of improvement, and I think, from its location (at the head of tide water navigation), that it is destined to be a considerable commercial place. I have enough work to keep me employed for several months. I hope to be able this year to make enough to support my family, and build me a good house in the town. I found that farming with my force was not sufficient to support my sickly family.

You recollect, on the morning we were in Campbell's office, the conversation turned upon the Du——r tract of land, and Campbell requested you to bring down the papers and let him examine them. If that examination has taken place let me know his and your conclusions upon the subject. I received a letter from Mr. John McManus upon the subject of my father's papers that were said to be at Mrs. Vaughan's, near Clinton, Mississ. He writes (from Raymond, at which place he resides), that there are a great number of papers out at Mrs. Vaughan's belonging to his father, but thinks them none of my father's, and promises to go and examine them all, and if there should be any he will send them immediately to you. I hope you have heard from him before this time. Write me the number of cases reported from the United States Supreme Court to the last acc'ts from Washington City. And send me the papers that will give me information about the progress of the railroad from Mobile to Ohio. I feel much interest in that project, and don't forget to send my card from the Sons (of) Temperance. I think I can form a good society at Liberty. There seems to be considerable interest manifested here upon the subject. My requests thus far can be complied with without any cost (save that of time) but here comes one that will cost some money. I want a work called the Water Cure. If you can contrive one to me, you will do me a particular favor. I am getting to have some faith in the practice, and wish to examine the subject. You requested me to give you a written statement of the amount of money I have had of you since January, 1844. I never kept any memorandum, and cannot do it accurately, but, from the best of my recollection, it is in all (travelling expenses included, about one thousand dollars. And this is not far from correct.

Yours in truth,

SIDNEY E. COLLINS.

Drury, from conversations with you upon religious subjects, I am led to the conclusion that you might be termed a penitent unbeliever. And if I were to say that you do not believe in Christ being truly

you regular upon the subject of religion. Should it not benefit us any other way, it will be exercise for our minds, and that upon a subject that is lawful in the sight of God and man, and such exercise as my mind greatly needs. If you have heard anything from Washington in relation to our matters in that region, let me know it. Answer me forthwith, make no more excuses for want of time. I learn that Taylor is elected President over Cass; I hope he will meet the expectations of the people; but I much preferred Cass; though the will of the majority be done; though I fear Filmore on the abolition question more than Taylor, I am certain of this one thing, that Taylor and Filmore both owe their election to Taylor's gun-powder popularity. My wife suggests that you will have to adjourn the reading of this letter until candle-light. I will therefore close, by subscribing myself, your friend, SIDN. E. COLLINS.

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the Son of God, I might be saying too much. But let that be as it may, this is the point I wish to come to, that without faith it is impossible to please God. And with faith Christ says, he that believeth on me, though he were dead, yet shall he live. John ii. 25. Thus you see that it is by faith that we are justified, and not by repentance. If forgiveness of sins were predicated upon the act of repentance, it would be impossible for God to punish the guilty; for who would not be penitent when brought to judgment? I answer none. And further, who is he that overcometh the world, but he that believeth that Jesus is the Son of God. 1st John v. 5th. And I ask, who is it that make a good use of time, talents, and money, save those that believe that Christ is verily the true God, and eternal life, and adorn their faith by their daily walk and conversation?

Letter No. 15.

LIBERTY, April 26th, 1849.

DEAR DRURY: Yours of the 9th instant is at hand, with my withdrawal card, the address of the committee to the citizens of Alabama upon the subject of banking facilities, and also a blank form of application for a charter, for which I return my thanks. The 3 copies of the constitution, Clark's address, and Fisher's address, and railroad proceedings, have not as yet come to hand; the cause of their failure I can't imagine. I hope though I shall get them in a few days. I am anxious to get Clark's address; it contains many valuable statistics in relation to the Sons of Temperance. I am obliged to you for your good wishes expressed "that my faith in the good effects of the order of the Sons of Temperance may induce me to establish the Star of Liberty division of the order." May your most sanguine hope be realized. I am satisfied, Drury, that the society of the Sons of Temperance is one of the best things for men's bodies and minds in a temperate point of view, and it is admirably calculated to open the way for the Gospel of the Son of God, by which their souls may be saved. Our endeavors should, if you wish to be useful, be, first endeavor to plant the Gospel in the hearts of men; that done, we have no need of Temperance societies; but where we fail to plant the Gospel, there plant the societies of the Sons of Temperance, and I hope that I shall be able to reach many of my neighbors through the Society of the Sons of Temperance who have heretofore proved impenetrable by the Gospel, and by that (as a means) cause them "to awake and arise that Christ may give them light." My brother, I now come to that part of your letter in which you cry out in the language of Agrippa, Thou almost persuadest me to be a Christian. And that you may see your case fully described by an able writer, I refer you to Wesley's Sermons, vol. 1st, page 20, and ask you as a favor that you read that sermon; and you say that when you would do good, evil is always present. The Gospel advice in this case is to resist the devil, and he will flee from thee, and when we successfully resist him in one instance, he

becomes more easily subdued in the next attack, and so on until we are enabled by the grace of God to successfully master him. Though you say that you are almost persuaded to be a Christian, dear friend and brother, I fear they are words without meaning, or of little meaning. Drury, I know what you have been in days that are passed and gone. You then had a tender conscience, a burning love and zeal for the cause of Christ. But since you became a public man, and has lost the influence of your inestimable companion, you have gradually fallen off until at this time of life, near 40, you are "but almost a Christian, and a peculiarly constituted mind, one whose action is made up of continued series of sinning and repenting." Now of the first part of the series I have not a doubt; but that the latter is after a Godly kind, I have much doubt, for the very fact that you recur from the latter to the former part of your series is *prima facia* that your repentance is not genuine. You are not sorry that it is an offence against the government of God, and against a Being who so loved you that he gave his only begotten Son that whosoever believeth on him should not perish, but have everlasting life. But you see in the Scriptures that God "looketh not upon sin with the least degree of allowance;" therefore you fear that you will have to suffer the consequences of sinning, and Satan (who is always at hand ready to apply a remedy for a bruised conscience) has led you to take up the doctrine that repentance will atone for sins. Now, my dear brother, let me admonish you not to be led any longer by Satan, but go and lay your burden upon Jesus Christ, the sinner's friend, and seek an interest in that "blood that cleanseth from all sin" (or in other words) by whose suffering and death pardon for you, and for me, and for all the world has been purchased, "by whose stripes you are healed." Christ says, I came to seek and to save that which was lost, and resolve from this good moment to cease to do evil and learn to do well, and, my brother, depend upon it, that if you are faithful and true, "God will lead you in a way you have not known." The Scripture says, to-day if you hear his voice harden not your hearts. Say not to me, go thy way for the present, when I have leisure I will call for thee. Drury, we have no lease of our lives; therefore, while it is to-day with us let us be up and doing, for the night cometh when no man can work, or, in other words, the grave will soon entomb us, after which we are told there is no repentance. With this one more remark upon this subject, and I am done for the present. Drury, my heart's desire and prayer to God is that you may be saved. Just at this moment I was called by two of my neighbors in pursuit of some runaway negroes.

April 27th. I am come to that part of your letter in which you hope that our good deeds will weigh, &c., in the day to come. I am taught to say that when I have done all the good I can, to say that I am but an unprofitable servant. I never expect to escape the torments of the damned upon any merits of my own. But blessed be ( ) I have a hope that there is one who is higher than I, who has

borne my transgressions and nailed my sins to his cross; it is Jesus Christ, the righteous; though I am certain that good works are well pleasing in the sight of God, and for that reason desire that my heart may always incline me to do good, or, in other language of holy writ, "to love mercy, deal justly, and walk uprightly before God" all the days of my life.

I have but gave a glance at the address to the people of Alabama, and though I have been strongly opposed to the banking system, yet I must confess that the reasoning of the committee has shaken my faith considerably, and if a bank or banks can be placed up(on) sure principles, I should be in favor of banks. Though this is what I fear; and it is to be feared in all republican governments. As to the subject in which you request me to be silent, my answer to that is that it is all in my eye, Betty Martin; when I see it I will believe it. I am glad to hear that your little ones are well, and I have long been of the opinion that you were greatly blessed in your children. May they prove to you a source of pleasure that may continue to increase as you decline in years, is my prayer. And to insure this, the best way is to bring them in the fear and admonition of the Lord, and this you can do better by example and precept than by precept alone. We have had no cholera here as yet, and I hope it will give us the go-by. My family is quite well, saving bad colds. Tell Lizza that Virginia is very proud of her thimble, and is learning to sew with (it) very well. But nothing was such "a go" as the little bed-quilt she sent to Indiana. And to Sarah say (for Virginia) that she thanks her for her little books, and that she has committed some of the prayers to memory. Indiana wishes you kiss Lizza for her. If you find it necessary to give Mordecai rest from his studies, I would like for you to send him down to spend a few months with me. Remember me to all the family and to Alexander and Billy Brooks. Write to me often, and especially while the cholera is about. In your letter before the last, or on the envelope, I noticed the expression H. is dead. Did you mean Howard Conway, or was it intended to confirm the report of Judge Crawford's death? If Howard is living, let me know how he is doing. My wife requests to be remembered to you. You forgot to say what you and Campbell had concluded to do in relation to the other suit we spoke of. Write me your views upon that matter.

Yours with sentiments too great to be expressed,

SIDNEY E. COLLINS.

Letter No. 16.

Liberty, March 8th, 1850.

DEAR DRURY: I received your letter of the 21st ultimo. I had concluded to remain where I am until next spring, as I find it will be impossible for me to settle my affairs here before that time. I hope that your anticipations may be realized in relation to our case at Washington. It has been so long in the Supreme Court that I

had almost come to the conclusion that it would never be reached, though I know that these things cannot be helped. But, Drury, such delays are trying to one in my situation. Had I not have promised you in the outset to let you manage the case, and rule the whole matter, I would have taken the offer of compromise which was offered; but as the matter now stands, if I never realize anything, I shall have an approving conscience that I have done right, and it is still my settled determination to do whatever you think is best in the premises. On the subject of California and the gold dust, I will say that I would like to do anything that would profit me something. I am at present barely making a support for my little family, and if you think we can do anything in that way, I am at your service. If you should think proper to go, let me know the place of rendezvous, or starting point, and in the mean time I will raise what money I can, though I think it doubtful whether I can raise enough to pay my passage without sacrificing more property (and that of a kind, cattle, that I cannot do well without) than I feel satisfied in doing; though if you think it best, and that we will need it, I will let them go. I can leave my family with my mother-in-law, and have them taken care of.

I received, a few days since, a memorial of the citizens of Mobile to State Legislature upon —— of the Mobile and Ohio Railroad. You say, in your letter, that the subject of railroads was popular. I hope, therefore, their prayer was granted, for if prayer was granted, I am sure (in my own mind) the road will be completed; and should it be completed, it will many dollars in our pockets, by the way. We are all well, at least what we call well. My own health is quite good. I have mended wonderful within the last two months, and hope, with the assistance of a kind Providence, and Weiss on Water Cure, to stay well. And should we go to the gold diggings, that work must accompany us. It is just the thing a southern latitude. I have been trying the system on myself and family for six or eight months past, and the more I study and try the subject the better I like it. I would recommend you to read the work carefully, though it is hardly necessary for you, for you and your children are never sick. Give my respects to all the children, and to Miss McKinstry, and last, but not least, Mrs. P——; and give Liza a good hug and sweet kiss for little Virginia, and tell her, for Virginia, that, with the thimble that she sent, Virginia has made her father a good shirt.

Your friend, S. E. COLLINS.

N. B. Tell Dr. Mordecai that old man Blanchet's note is now due, and the old man pleads for more time, and says that he has made a land trade, from which he will be able to pay the money next January. If he wishes suit commenced, let the Doct. inform me.

S. E. C.

Letter No. 17.

Liberty, Texas, March 18th, 1850.

DEAR DRURY: Your last letter gave me the California fever wonderfully, and laboring that excitement, I replied to your letter, but since I have had time to reflect upon the matter, and gather such information as was within my reach, I have come to the conclusion that California is no place for me at this time; at least, I think that gold digging at $5 per day, with expenses off, is not sufficient inducement for me to forego the pleasure I find in the society of my wife and little ones. Your suggestions that large profits may be realized by trading and sending goods in adventures to the mines, I think are very correct; but for a person to engage in that kind of business, it would be necessary for him to take a considerable amount of funds with him from this country, which would be impossible for me to do, and, unless I am much mistaken, would be difficult for you. If I should go to that country, I should move lock, stock, and barrel. The distance and expenses are such that a person would waste too much time and money to make business, in that country, profitable. I doubt there being any place or business in the world that a person can give 2 months of his time, and 500 dollars out of the other ten months' earnings, and realize much profit at the end of the year. There is no one more desirous to enter into some avocation by which I can make a living for myself and family than I, other than manual labor; for I find that disease has so preyed upon my physical abilities that I cannot last long at hard labor. At the same time, I am aware that moderate exercise is best for . In case we should get a decision in our case this year (and in our favor), will there be any possible way of realizing a few thousand in cash without selling any of the property? Or, if we should be compelled to sell, what proportion? I have been thinking that we would, perhaps, do better to turn the whole into negro property, and commence the sugar-making business, for which business I have a tract of land adapted, and advantageously located for navigation. The tract between the Martin place (where I lived in '44) and the town of Liberty, containing 400 acres. What say you to joining me in the business of sugar raising? This is a slow but sure business. I clip a piece from the *Houston Gazette* upon the subject of California. It was published, I think, 6th March. You did not say whether the petition of the trustees and stockholders to the State Legislature was granted or not. Look in Globe and see the number of last case reported by the Supreme Court, and write me.

My little child Indiana is quite sick with ague and fever; the rest of the family is well. Your friend, S. E. COLLINS.

Letter No. 18.

LIBERTY, August 9th, 1850.

DEAR DRURY: I received yours of the 10th ultimo, in which you

mentioned your misfortune of losing your wife. (I could not well realize that you had married, not having heard a word from you upon that subject; however, I suppose it was not necessary that —— should know anything about the matter.) I regret exceedingly, dear friend, to hear of your sad bereavement; but you cause joy and consolation to arise in your next sentence, "that she was a good woman, and prepared to meet her God." Therefore, Drury, what is your loss is her gain; and under such circumstances we should rather give vent to joy than grief. Dear friend, I look upon the matter as a mercy sent from Heaven to arouse you from that awful doom that awaits the careless and unconcerned. "Thou knewest thy duty, but did it not." I hope you may be able to view it in this light, and profit by the dreadful calamity. You remarked that you hoped yours would find me and mine in good health. Not so; I was taken about the 27th or 28th of June with inflammation of kidneys. As I was getting over the affection of my back, I was taken with a rising in palm of my hand (something like the bone felon), which has kept me confined about 3 weeks. My hand is yet very stiff, and I fear that it will be a long time before I can use my hand to much advantage. The health of my children is rather better than that of my neighbors'; they have the fever about once a month, on an average. My wife is in very low health, arising from her suppression of menstruation, which has taken place but once since the birth of her last child, four years last March. I have strong hopes during the spring to see her recover her health under the water-cure treatment; but the symptoms of the last month are discouraging; though I yet hope that the late bad symptoms may be what the doctor calls the "crisis." Our sickly season has set in upon us, and threatens to be very severe. We have had several deaths, and a goodly number of abortions, supposed to be caused by heavy lightning and thunder, which we have had for some time past. Very nearly all the cases of sickness among us has been congestive fever. I am sorry that you cannot come to Texas. I wanted to see you very much this summer, that we might talk over and arrange our plans for future operations. There is one thing sure, that whether we succeed in the suit against Kennedy or not, this Liberty can't hold me another year, if I can possibly help myself. I was at one time near packing up my little all and putting out for some more healthy place; and had it not been that I was sure that I would gain in the case against Kennedy (in which event I shall live the balance of my days in or near Mobile), I should have left this place two or three years ago. I intend that in case the matter is not settled in Mobile by next May, that I will take my family and go up the Trinity River some 150 or 200 miles, and, if I can't get anything to do, to spend the summer up there; or perhaps I may go to Austin. I do not know how I misunderstood the notice from the Supreme Court. I read the case adjourned, &c.; but I suppose I should have read, "the Court adjourned to the time and place appointed by law." Don't forget to send me a copy of the statute which you speak of in your last. I

think it is likely that if I had that I could satisfy my relatives upon the subject of their interest.

Give my love to your children, and let me hear from you often.

Your friend, SIDNEY E. COLLINS.

I have had some letters lately, which I call *feelers*. More anon.

S. E. C.

Letter No. 19.

LIBERTY, Sept. 7th, 1850.

DEAR DRURY: Yours of the 14th of August came to hand on the 28th of the same month. I should have replied sooner, but have been prevented from one cause or another until this morning. I have not time between this and the departure of the mail to write at much length. Suffice it to say that we are all in pretty good health for the season of the year in Texas, and we hope that, as the weather continues to moderate, our health will continue to improve. The reason why I was silent (in my last) upon the subject of Texas boundary, and the probable conflict with the Federal Government, was not because I lived in a dark corner, where the war sparks had not reached me; it was because I dreaded the issue of the question, for I conceived that I could see in the political horizon a disposition on the part of Northern fanatics (whose minds are excited against Texas upon the subject of slavery, to which is added some of the Southern Whig influence) to take some advantage of Texas in the settlement of this vexed boundary question. However, I hope the question will be finally settled to the satisfaction of both parties, without compromising the *honor* of either; though the proposition of Mr. Pierce has many opposers in Texas, and it is very uncertain whether Texas accedes to the proposition or not.

I am obliged to you and Mr. Campbell for his opinion upon the subject of the law of Alabama regulating the descent of property within its limits. I have shown it to some of my most officious relatives and their counsel, and I think it will settle the matter, though their lawyer has raised another question, in which he says there is a chance yet, and that is, that all moneys that I may recover from the parties will be held as personal property, and would be distributed in accordance with the laws of the State where George Collins died. My own opinion of the above proposition is that it is a long shoot and a warbling chance. It only serves to show what turns SOME lawyers will take in a bad case; for to admit the truth of the proposition, it would have to run or go back to the time of George's death, and the question would be, was there any personal property at the death of George Collins? There may be personal property at this time, but it has been the result of my actions. I expect to take a trip to Western Texas—to start about 15th of October, and be absent some six weeks. I would like very much to have your company. I think

the trip would be one of interest to you, and perhaps one of great advantage.

Give my love to your children, and let me hear from you soon.

Your friend, SIDN. E. COLLINS.

Letter No. 20.

LIBERTY, September 21st, 1850.

DEAR FRIEND: Your favor of the 4th came to hand on the 11th inst. I regret very much to hear of your ill health, and I fear that your low spirits and sad heart (if indulged in) will undermine your constitution, and bring you to a premature *grave.* It is true, dear friend, you have great cause for sorrow, in your recent irreparable loss, but when you cast your eye of faith to the future, you must feel that you are of those who have no hope; then, blending the present sorrow of heart with the future joys of soul which hope bringeth, and it so relieves our heart that we are enabled to sing, "Earth hath no sorrow that heaven cannot cure." I am prepared to sympathize with those who are in bad health, having had my full share of sickness in my own person, or in that of my wife, who has been sick 5 years out of seven that we have been married; but I still have strong hope that "better days are coming." My younger child (Indiana) is fast recovering from a severe attack of inflammatory fever, in which I felt at one time that I should suffer a temporal separation; but, thanks to a kind superintend Providence, she was spared to me yet a little longer; "but that little none can know." My own health is somewhat improved since I wrote you last. In relation to the feelers, I must be excused from saying more upon that subject at the present. In future, if I should think that any good would result from it, then I will tell all about it. I have not a doubt but that they would be glad to effect insurance against losses; and if all insurance offices looked on the matter as I do, they would require a fine premium to insure, for, since I have read Campbell's brief for the Supreme Court, I have been perfectly satisfied that the case must be confirmed by the Supreme Court, and shall rest with that conviction until time reveals the true state of things. I am happy to hear that the railroad is going ahead, and that the subject has ceased to be a *monster* in the minds of the people. I well recollect what a by-word Baldwin's railroad once was. It was looked upon and spoken of by many as one of the great humbugs of 1845–6. I have been looking for a notice of the rise of property in Mobile, for it cannot be but that the completing of this road to its terminus on the Mississippi River, and with the Selma and Tennessee road, that will increase the business to double if not treble its present amount; and wherever you make business, there you will soon have the population. I think your idea of the lumber and brick business is a good one, provided we could start it, and I know of no business that would suit me better for the present—at least as long as we have a vacant lot between *Royal and the river.* I am

sorry to hear of such a number of fires in Mobile. Why is this? Have you such a number of lawless citizens that they cannot be detected by your city *watch*. Perhaps a change in the watch would work well. There is much sickness in our little town; at my nearest neighbor's 7 or 8 are down with fever; at one of my brother-in-laws —H. L. Thompson—there is 4 out of 6 of his white family down—he among the number; at Doct. Desmuke's, about half a dozen cases bl'k and white. The hour for the departure of the mail draws nigh, and my duty to the sick admonishes me to bring my letter to a close; so farewell for the present. S. E. COLLINS.

P. S.—What is a negro woman, fifteen years old, of sound body and mind, and a good field hand, worth in Mobile market? I have traded for one which I shall have to sell to enable me to settle up my Texas matters to my notion. She cost me in trade $550. Could you take care of a little girl ten years old for me? If you could, let me know forthwith, for I think it best for the child and me, for me to move her from this county. The particulars of the matter I will state when I have more time. Your friend, S. E. C.

Letter No. 21.

LIBERTY, November 18, 1850.

DEAR DRURY: Yours dated 10th October came to hand this morning by the northern mail. How it got into the northern region of Texas is hard to conjecture; at all events, it had a long passage. I am glad to hear that you are in good health, and that the major is still among the living. The health of myself and family is better than usual for us, though my eldest child has the fever at this time. I shall start for Western Texas to-morrow morning, if it is not pouring down rain. My object is, to attend to my land. I am making my arrangements to leave Texas by the first of January, and should the Supreme Court decide in my favor (which I have but little doubt of). I shall come to Mobile, and there spend the balance of my days. If I can sell my interest in Texas, I will make a clean turn of Texas. Since I wrote you about taking care of the little girl, I have disposed of her by letting her mother have her again. Her mother has married a pretty respectable man, which I hope in time will take off the reproach which she had brought upon herself. I have not sold my negro girl yet, and if I can manage to get along without selling her, I will keep her. I shall not be at home before Christmas. You must keep a look-out towards the U. S. Supreme Court, and let me know all that takes place; and in the mean time, look out for some employment for me that I may be engaged in, that will help to make a living. I regret to hear that the idea of disunion is entertained by any of the people of Georgia or Alabama, for the idea that a peaceable dissolution of the Union can take place, and that harmony will continue, is as impossible as to say that every limb can be taken from the human body and produce neither injury or pain.

There is no way (in my opinion) to carry out a peacable dissolution of the Union, unless we could raise a barrier that would be both insurmountable and unsurroundable. The election for the adoption or rejection of the proposition from the U. S. to Texas has just taken place; there was a small majority in favor of the proposition. So far as I can hear, the State has gone in favor of the measure, but with not a very large majority.

You say you wish you was with me on my western trip. I can truly say, I wish so too. My wife wishes to be remembered to you. Remember me to your children. Yours truly,

S. E. COLLINS.

I will write you from Austin, Texas. S. E. C.

Would it be best (in case I should move to Mobile) for me to sell my household furniture that I have here, and replenish again in Mobile, or would it be more advantageous (to) box up my bedding, &c., and ship them to Mobile? I apprehend that it will be difficult to sell such things here for cash, though on 6 or 12 months' credit, such articles will bring a fine price. S. E. C.

Letter No. 22.

MOBILE, June 28, 1853.

CAPT. CLEVELAND:—

Dear Sir: To-morrow morning I leave for Hinds County, Miss., to return as soon as the health of Mrs. Collins permits—at furthest, 10th October. W. A. Smith met me this morning, and requested me to say to you to call on him, the first time you came to the city, and tell him the terms for the 2 stores now occupied by Aldrich and Gyles, Hyman & Co. He thinks he will go up if we will give him a liberal chance (I say let him in). Gyles & Hyman tell me they have arranged with their creditors, and are going ahead; that if we will take liquor for the quarter's rent due, send in the orders; and if we can extend the time—say the quarter now due to the 1st of November, and those due 1–4 August and 1–4 January—they will be much obliged. My own opinion is they are already broke, and if you could get liquors for the rent, that we had better take them, and store them till fall; though I wish you to do whatever you think best in the premises. Mr. Kenneth King has promised to look at the stores and make a proposition for one. Please see him. The Alston matter is just where you left it; I have not seen either of the parties since I saw you. Upon the matter of renting of the stores, I think stores will be a drug here for the next business season.

Yours, respectfully,

SIDN. E. COLLINS.

Direct interrogatories to said witness filed 2d December, 1856. Cross-interrogatories filed 13th December, 1856.

Attest: GEO. E. HOLT, *Clerk.*

The foregoing deposition of the witness, James H. Campbell, Esq., was taken, subscribed, and sworn to at the city of Mobile, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause, having been commenced on the 6th and completed on the 7th day of April, A. D. 1857.

Received and filed 7th April, 1857.

Attest: GEO. E. HOLT, *Clerk.*

No. 4. *Interrogatories to be propounded to Daniel Chandler, a witness at the instance of the defendants in the said cause.*

1. Do you know the parties to this suit?

2. Were you connected with the late firm of Campbell & Chandler until it was dissolved? if yea, state how said firm became connected with the suit of Sidney E. Collins against the executors and heirs of Joshua Kennedy, deceased, referred to in the bill and pleadings in this suit; state when you were employed in that suit, and by whom.

3. Who prepared the pleadings in that cause for the plaintiff, and had the general management of it? Were you present at the argument? Did you take part in the argument? Was the plaintiff present, and did he attend and listen to the argument?

4. What attorneys commenced that suit, and conducted it to its close, and what connection had you, or any member of your firm, with the final settlement of the subject matter of that suit, between the parties to this suit? and state particularly all you know of the opinion and feelings of the *feelings of the* plaintiff in this suit in regard to that settlement for a long time after it was made, and any dissatisfaction expressed at said settlement, or with any member of your firm by the plaintiff on account of said settlement for several years after it was made.

5. What were your relations to the plaintiff from the time of said settlement in 1851 until 1855? Did you transact business for him, and act as his legal adviser? Did he ever during that time express dissatisfaction with your firm on account of said settlement, during all that time, to wit, from the time of the settlement until 1855?

6. When did you first hear the plaintiff complain of your firm on account of said settlement, or when did you first hear of the accusation against you, or your then partner John A. Campbell, contained and alleged in this bill?

7. Have you read carefully the charges made against you, or against the firm of Campbell & Chandler, and the firm of Chandler, Smith & Herndon? If yea, state if they are true or false. State all the facts within your knowledge that will tend to show them either true or false.

8. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of

this investigation, or the matters in question in this cause? If so, set forth the same fully and at large.

DARGAN & HALL *for Def'ts.*

Filed November 25th, 1856. GEO. E. HOLT, *Clerk.*

Objections and cross-interrogatories to said witness filed by the complainant in the said cause.

Complainant objects to the competency of Daniel Chandler as a witness for the defendants, on the ground that he is interested in the result of the suit. He also objects to so much of the 4th direct interrogatory to this witness as is in these words: "Was any dissatisfaction expressed at said settlement, or with any member of your firm, or by the plaintiff on account of said settlement for several years after it was made?" as leading, and as impertinent, and he also objects to so much of the 5th direct interrogatory to the witness as is in these words, "Did you transact business for him, and act as his legal adviser? Did he ever, during that time, express dissatisfaction with the settlement, or with you, or with your *or with your* firm, on account of said settlement until 1855?" on the same grounds, and without waiving these objections or any of them, he cross-interrogates the said Daniel Chandler as follows:—

1. Was not your firm Campbell and Chandler, counsel for the heirs of Wm. E. Kennedy, in the suit in *chancery Mobile* against the heirs and representatives of Joshua Kennedy? When did said cause come to a hearing before Chancellor Bowie? Did you not participate in the preparation and argument of that cause?

2. Were you not acquainted with the testimony of William Kitchen taken in that cause, and was not its bearing upon the title of Collins to the piece of land north of St. Louis Street, and east of Royal Street, in the city of Mobile, noticed, discussed, and understood, by and between yourself and your partner prior to 1844?

3. Was not your opinion upon the title of Collins to the said piece of land, sought by Wm. D. Primrose, and did you not give him your opinion in writing, and was it not favorable to the subsistency and validity of said title? State, as near as you can, the time when this opinion was given.

4. Do you not know, or have you not been informed that Primrose had obtained the opinions of other eminent counsel, as to said Collins' title prior to 1844, and that such opinions coincided with your own?

5. Did you not know, or were you not informed, prior to 1844, that Thomson, Primrose, and Cleveland, had agreed together for the purpose of purchasing Collins's title to said land, or in some manner obtaining the control of it for their own use?

6. Do you not know that with these persons it was a mere matter of pure speculation, and that they or some of them were investigating the title of Collins, and making inquiries to ascertain his residence for some years prior to 1844?

7. Were you present when the contract was made between Drury Thompson and your partner for the employment of your firm as counsel to bring and prosecute the suit? If not, from whom did you derive your information in regard to it?

8. Was said contract in writing? If yea, attach it, or a true copy, to your answer. If it was not in writing, set forth its precise terms, as you understood them.

9. Were you present at the meeting between the complainant and Drury Thompson, Wm. F. Cleveland, James Campbell, and William D. Primrose, at the office of Campbell & Chandler, on an evening in February, 1851, set forth in the bill?

10. Is it not true that during the pendency of his suit *vs.* Kennedy's heirs and representatives, and until in 1853, Mr. Collins seldom conversed with you on any subject, and never about his said suit, or its results?

11. Was there any degree of intimacy between you and Mr. Collins, from your first acquaintance with him up to 1853?

12. Did you not act as Mr. Collins' legal adviser after the termination of his suit *vs.* the Kennedys, and up to 1853, in any matter whatever, except in the small matter of Cassell against him, and in the suit which he brought against Walker? If yea, specify the matters upon which you rendered him any legal advice.

13. What, if any, degree of intimacy existed between yourself and Mr. Collins during the year 1853, and until July, 1854? Did he during this time consult you as an attorney at law, upon any matter whatever? And if yea, what was it? And how often did he converse with you on the subject?

14. When did Mr. Collins first speak to you on the subject of his difficulty with Drury Thompson, William F. Cleveland, and James Campbell, and where was it? Was it not in the summer or autumn of 1853, and on an evening in your office?

15. And is not the following the substance of the conversation: Did not Mr. Collins first ask you this question, "Is your connection with Drury Thompson, Wm. F. Cleveland and James Campbell, such, that you cannot be employed to call in question the settlement made between myself and them in February, 1851?" And did you not answer to this, "That you had no connection or engagement that would prevent you being employed by him."

16. Did not then Mr. Collins further say to you, "That he wished to engage your services in the event he should bring a suit against them, which he intended to do, unless they would agree to what he thought was a fair arrangement?"

17. Did not Mr. Collins further say, on this occasion, that he thought the deed (referring to that of February 15, 1851), was void, assigning the reason why he thought so, and that he had no idea what the property was worth, when he made the deed; that he has since learned he had given them $150,000 or $200,000 worth of property, and that Thompson, Cleveland, and James Campbell, had done

nothing, and that instead of spending large sums of money as they pretended, they had advanced but a very small sum.

18. Did not Mr. Collins also state, "that he never would have signed the deed, had not Mr. John A. Campbell advised it?" And to this remark did you not reply, that he (Mr. John A. Campbell) must have been misled by Thompson and the others, and could have had no idea of the value of the property for what they had paid, or he never would have advised such a settlement?

19. Did not Mr. Collins also on this occasion tell you, that said deed was without consideration; that at the time it was made he was in possession of the property, and the suit was not terminated; that he was deceived by the parties; that he was led to believe that Thompson, Cleveland, and James Campbell, had rendered valuable services in the prosecution of the suit, and expended large sums of money, and that their services and means were essential in its further prosecution as to boundary and rents, but instead of this, so far as he could ascertain, your firm (Campbell & Chandler) and Primrose had done all that was of service in the suit? And in answer to this, did you not say, that a deed made under such circumstances was champertous and against the policy of the law, and could not stand, unless he had done something to ratify it?

20. Did not Mr. Collins then further state to you, that he had been led into contracts for building and improving some of the property, and that a part of it for 1852–3, had been rented in the name of Collins & Cleveland? and did you not then advise him thereafter to rent the property in his own name, as that would compel them (Thompson, Cleveland, and Campbell) to come to an arrangement, or to sue him, which would place him in a better position than suing them?

21. Did not then Mr. Collins further say, that the property was largely in debt, and he preferred not to get into law with them until he could pay off or diminish these debts; that the rents would soon enable him to do that, if the renting could go on undisturbed, but that he feared an immediate suit with the liabilities then existing upon the property, might involve him in sacrifices, or the loss of it? And did you not then advise, that if he wished to avoid immediate litigation, he could lease in the names of Collins and Cleveland, but at the same time to notify the tenants that he claimed the whole property, and recognized no interest in Cleveland, or any one else, but that he gave him an interest in the rents on account of transactions between them?

22. And to the inquiry of Mr. Collins how he should give this notice, did you not tell him to take some one with him as a witness to give the notice, when he made the leases?

13. Did not Mr. Collins, soon after the 16th of December, or in the latter part of December, or in January, inform you that the deed of the 15th February, 1851, above referred to, had been put upon record, and request you, when you should go to the Court-house, to

examine it, and to give him your opinion as to its validity? And did you not, after such examination, tell him it was invalid, but that the danger to be guarded against was, a ratification of it; and did not Mr. Collins then say, he wished to be protected against that deed, and against doing anything that could be considered an acknowledgment or ratification of it; and that he should rely on you for advice?

24. Do not the above interrogatories from 15 to 23 inclusive, contain the substance of what took place in the conversations that occurred between you and Mr. Collins, from November, 1853, till about the latter part of February, 1854, when Mr. Collins left Mobile for Texas?

25. Did not Mr. Collins, immediately before he left for Texas in February, 1854, call on you and tell you he was going to Texas, and had brought a copy of the deed of 15th February, 1851, to leave with you, and did he not then say he wished to be made acquainted with your partner, Mr. Smith, and to show him said deed; and did you not then take him into your rear office, and introduce him to Mr. Smith, and there leave him?

26. Did not Mr. Collins, on this occasion, leave with you, or your firm, a copy of said deed of February 15th, 1851, and also a paper which is referred to in John A. Campbell's statement as marked B, and request you to show said paper to Mr. Campbell?

27. Was it not the expressed wish of Mr. Collins, in all his interviews with you on the above subject, to postpone for a while any suit as to said deed of the 15th February, 1851, and to effect an amicable arrangement, if possible, but in the mean time to do no act which could be in any manner construed into a recognition of right in the defendants by virtue of it on his part, or into its ratification? And was it not upon these matters that he sought your services and advice?

28. Did not Mr. Collins, in his interviews with you on the above subject, expressly question the validity of said deed of 15 February, 1851, and assign his reasons for doing so, and did he not expressly inform you of his intention of testing its validity by suit, if his suspicions in regard to it should be confirmed, and he should not be able to effect a satisfactory arrangement, and were not your professional services sought by him with reference to such a probable result?

29. Did not Mr. Collins, in some of his interviews with you on the above subject, say that he did not wish to involve Mr. J. A. Campbell in the matter if he could help it? And did you not, on one occasion, say to him, you did not see how, in any suit he might bring against Thompson, Cleveland and Campbell to avoid said deed, he could help making J. A. Campbell a party? And have you not made this last statement to others?

30. What valuable services did James Campbell ever render the complainant in the prosecution of his suit against the heirs and repre-

sentatives of Joshua Kennedy? If you know of any whatever, specify and set forth the same.

31. What, if any, services did Wm. F. Cleveland ever render the complainant in the prosecution of the same suit? If you know, specify and set forth the same fully and particularly.

32. What services were rendered the complainant in the prosecution of said suit by Drury Thompson? Specify and set each and all of them forth, and state their value in money.

33. Did you not, before the filing of this bill, complain that your fee note was suffered "*to be protested*, while others (referring to these defendants), who have done little or nothing, enjoy *the fruits of their labor?*"

34. Were not your fee notes secured by a mortgage on a part of Collins' estate recovered by him from Kennedy's heirs, and were not said notes made by James Campbell, payable to the order of the complainant, and indorsed by him?

35. Did not James Campbell refuse to pay one of said fee notes due in June, 1855, and suffer it to be protested; and did not his son, acting in his behalf, afterwards request you to foreclose the mortgage?

36. Do you not know that the defendants, or Campbell and Cleveland, have been receiving, and are now in the receipt of, two-thirds of the rent of the said property recovered by Collins, which two-thirds amount to about ten thousand dollars a year?

37. Has not your entire fee of ten thousand dollars, with interest, been paid by Mr. Collins; and were not the two last notes given for it, one amounting to $2,640, due June, 1855, and the other to $2,800, due June, 1856, both paid by him last June?

38. When were you, or your firm, employed by Campbell & Cleveland, in anticipation of the pending litigation? State, as near as you can, the day, month and year.

39. Was not a copy of the bill in this case forwarded to Judge Campbell, at Washington, in December, after it was filed? If yea, for what purpose was it forwarded, and by whom, and at whose instance or request?

40. Was not Judge Campbell's written statement and argument in reply forwarded to the counsel of the defendants, or some of them, and when was it received?

41. Was not said written statement and argument perused by counsel for the defendants, and were its contents not known to those who drew the answers? And was it not used in drawing said answers?

42. Was not said written statement of Judge Campbell read to, or read by some, or all of the defendants, or which of them, before their answers were made?

43. Has not Judge Campbell been consulted as to the defence in this case, and his opinions obtained?

44. Has not Judge Campbell been kept advised of its progress? And has he not done all he was capable of for the defence?

45. Was not a copy of the bill sent to Judge Campbell, in order that the defendants might have the benefit of his reply before they should be required to answer?

46. Has not William D. Primrose conveyed to you all his right, title and interest in the property recovered by Mr. Collins from the heirs and executors of Joshua Kennedy, and do not his deeds bear date on or before the 15th of May, 1852? If his deeds embraced anything less than his entire interest, specify and describe what he did convey.

K. B. SEWALL,
of Counsel for Complainant.

Objections and cross-interrogatories filed 6 December, 1856.

GEO. E. HOLT, *Clerk.*

No. 4. *Deposition of Daniel Chandler.*

The said witness, in answer to the several foregoing direct and cross-interrogatories propounded to him, deposeth and saith, on oath, as follows:—

1. I know the parties.

2. I was connected with the law firm of Campbell & Chandler until it was dissolved in April, 1853. The firm was employed in the case of Sidney E. Collins against the executors and heirs of Joshua Kennedy, late in the winter or early in the spring of 1844. We were employed, as I understood, by Drury Thompson. I was not present when the contract was made, but was soon after so informed by my partner, Judge Campbell, and have always so understood since.

3. The pleadings in the cause were prepared by Judge Campbell, who had the principal management of the case. I argued the cause on the trial below with Judge Campbell for the plaintiff. The plaintiff was present, and attended the trial and listened to the argument.

4. Campbell & Chandler commenced the suit, and prosecuted it to its termination. Judge Campbell made the final settlement. I was not present, but soon after heard of it from Mr. Campbell and some of the parties. The plaintiff was satisfied with the settlement for a long time after it was made, so far as I know, say until the last of the year 1853, or first of the year 1854. No dissatisfaction was expressed to me of the settlement until about that time, and none with any member of the firm on account of said settlement, so far as I know, until the spring or summer of 1855.

5. My relations with the plaintiff were friendly from 1851 till this suit was commenced. After the dissolution of the firm of Campbell & Chandler, and the formation of the firm of Chandler, Smith & Herndon, in April, 1853, the latter firm were his attorneys in two of his cases—they were not important ones. During that time, that is, from the dissolution of the firm of Campbell & Chandler, in April, 1853, to the last of 1853, or the first of 1854, I never heard him

express any dissatisfaction with the settlement, and none with either member of the firm until after that, say in the spring or summer of 1854. He first complained of Cleveland and Campbell getting too much, but did not censure or blame Judge Campbell for the settlement until the spring or summer of 1835. Late in the winter, or early in the spring of the year 1854, he spoke of him in the highest terms, and expressed his satisfaction with what his attorneys, Campbell and Chandler, had done.

6. It was in the spring or summer of 1855, Mr. Collins, before he went to Texas, in the spring (I think in May) of that year, left with me a note of Jacob Magee for eight hundred dollars I think, to meet one of the interest notes on which he was liable, one that Judge Campbell held falling due about 1st July, 1855. He requested me to collect the note of Magee, and pay the note held by Judge Campbell. In that interview he spoke favorably of Judge Campbell.

I never heard, until the bill was filed, that he complained of anything that I had done in the cause. It was in the spring or summer of that year that I heard he complained of Judge Campbell.

7. I have read carefully the charges in the bill in relation to the firm of Campbell and Chandler and myself, and my present firm, Chandler, Smith and Herndon. The charges affecting the character of the firms, as far as I know, are unjust and untrue; and those relating to myself, wherein I am attacked, are also unjust and untrue. It is impossible for me to state all the facts that would show the allegations in the bill to be false. I will, however make a general statement in reply to this and the next interrogatory, and a more particular statement in reply to the several cross-interrogatories. The firm of Campbell and Chandler were employed by Drury Thompson to bring the suit in favor of Collins *vs.* The Executors of Joshua Kennedy, late in the winter or early in the spring of 1844, as I was informed and believe, at all events I never heard of any engagement before. The consultations in the case were principally between Judge Campbell and Thompson. Collins, while in Mobile, was occasionally in the office of Campbell and Chandler, and I know of nothing that would induce me to believe or suspect, that anything was ever done to conceal from him his rights or interests, or to collude or combine with any of the defendants to injure him. There was no concealment or collusion as far as I know on the part of any one to injure the plaintiff.

I supposed the plaintiff knew who was to be interested in the suit. He remained with Thompson while in Mobile, and was friendly with Primrose. After the settlement of 15th February, 1851, I heard no complaint or dissatisfaction for a long time. The plaintiff was poor, as I understood before the recovery, and by the recovery and settlement he was made independent. He seemed to be content with his good fortune. The parties sold some of the property—improved portions of it—and were receiving large rents, and they appeared for a long time to be acting harmoniously together. Late in

the fall or early in the winter of 1853, Mr. Collins began to complain of the past treatment of Campbell and Cleveland towards him, and of the management of the property, and consulted me about bringing them to an account for the rents and a settlement, &c.

There was no complaint of Thompson and of Primrose. I refused at first to give any advice on the subject, saying that the firm of Campbell and Chandler had been the attorneys of Cleveland, and I would take no case and give no advice in the matter, until I ascertained whether Cleveland wished the services of our firm.

The consultation was in relation to the rents of the property, and the settlement of the accounts for the rent, and not the title of the parties to the property. Afterwards I was told, first *first* I think by Mr. Collins, but certainly by Primrose, that Mr. Cleveland said he had employed other counsel, and was glad that Collins wished to employ our firm, as the matter probably could be arranged and settled. Cleveland afterwards denied this, and stated that he had employed no one, and expected if there was any litigation in the matter, to engage the services of our firm.

Mr. Collins did not retain or employ us to bring Cleveland to an account and settlement, and no charge was ever made for any advice I gave him as to the rents or settlement. In the winter or early in the spring of 1854, for the first time Mr. Collins spoke to me about filing a bill to set aside the deed and settlement of the 15th February, 1851. I told him I could not undertake the case; that I could not attempt to undo what Campbell and Chandler, as attorneys, had assisted in doing. I told him, moreover, that he had ratified in many ways that settlement; and even if I were in a situation to be employed, I would advise him not to commence the suit. He said, in reply to my remark, that I had done nothing that I would have to attack, and it would not be necessary he thought, to make Judge Campbell a party, or attack him; that he did not blame him—only in this—that he was deceived as to the value of the property, and had allowed Campbell and Cleveland too much. His motives or honesty, he did not impeach or question. Upon my refusing positively to take the case, he asked me if Mr. Smith, my partner, would not undertake it. I told him I did not think he would; but, at his request, I went out of my room into his and Mr. Herndon's, which was separated from mine by folding doors, one of which was open, and told him that the plaintiff wished to employ him and Mr. Herndon, to undertake a case for him. After explaining briefly to Mr. Smith the case, he declined peremptorily to undertake it, and I returned to my room, and so informed the plaintiff. He immediately went in the room of Mr. Smith and Herndon, and I afterwards was informed that Mr. Smith refused to undertake the case. I was not consulted any more about the matter. In July, 1854, Judge Campbell showed me a letter written by Collins, dated Citronelle, July 6th, 1854, in which Mr. Collins states, "that he has employed Smith and Chandler to bring suit to quiet his title." I wrote to Mr.

Collins, denying the statement, and explaining the matter as I have herein done it. He never answered my letter, or referred to it in our future conversations.

In May, 1855, before he left for Texas, he left with me, as I have before stated, a note of Jacob Magee for collection, with a request that when collected, I should apply the proceeds to the payment of a note of his held by Judge Campbell.

He took no receipt from me, or memorandum, to the best of my recollection. He then spoke kindly of Judge Campbell; and I either learned then from him, or soon afterward from Primrose, as coming from him, that Judge Campbell would not be made a party to the bill that he expected to file. Mr. Collins returned in December, I think, after the bill was filed, and, in going up Royal Street, I saw him, for the first time crossing the street, and coming apparently to me. I passed him without speaking to him. I never spoke to him afterwards about the bill, but I understood from Mr. Primrose, that he expressed surprise that I should be offended at anything that was in the bill. I knew the handwriting of Sidney E. Collins, having seen him write. The annexed letter marked B, is in his handwriting, and was delivered to me by Mr. Primrose. The annexed brief of John A. Campbell marked C, in the case of Sidney E. Collins *vs.* Hallett and Walker *et al.* was printed in the spring of 1850, and was the only one that had been prepared and published before May, 1850. The annexed printed abstract of the case of Joshua Kennedy's heirs and executors prepared for the Supreme Court of the United States, and marked Exhibit D, was in the possession of Sidney E. Collins, and his name is written on the back of it in his own handwriting. The case was argued in Washington City, in 1850. Mr. Campbell brought with him on his return from Washington, one of these printed transcripts. Mr. Collins borrowed it, and I am informed, and believe, that he now has it in his profession. We required our copy, and the one hereto annexed was received in the place of it; I do not now recollect from whom we got it. On the trial of the cause it was proved that Campbell and Cleveland had purchased the lot on the northeast corner of St. Louis and Water Streets, in Mobile, in 1834, I think, without notice of any fraud. It was also proven that the Branch Bank bought and paid for it under the same circumstances. There was no contradicting proof on the point, and on the hearing, when Mr. A. Fox, the attorney of the Branch Bank, proposed to argue the case for the Bank, he was stopped by Mr. Campbell, and informed that all we asked was the price for which the property was sold. We had a decree accordingly. This was in 1847.

To the cross-interrogatories Daniel Chandler answers as follows, to wit:—

1. Campbell and Chandler were the counsel of the heirs of William E. Kennedy. The cause came to a hearing in November, 1840, I think. The cause was prepared principally by Judge Campbell. He attended principally to the Chancery cases, and the land suits. I

often assisted in the argument of such cases, but took no part in the argument of this case.

2. I have read the deposition of Wm. Kitchen, in the case of the heirs of William E. Kennedy *vs.* The Heirs and Representatives of Joshua Kennedy; its bearings upon the title of Collins, was never to my recollection noticed und discussed by Judge Campbell and myself before 1844.

3. I have no recollection of having given such an opinion, but may have done so, on a particular branch of the case. I know little or nothing of the facts involved in the case, until after the bill was filed, and could not have given an opinion at the time it is alleged to have been given, say in 1839, on the merits of the case. From what I have understood, I think it probable I gave an opinion on a certain statement of facts made by Mr. Primrose, without examination, and which did not relate to the many and complicated questions involved in the case. I did not know the facts in 1839, and could have given no opinion on them. If any opinion was given I received nothing for it, and made no charge for it; I infer therefore it was given on an isolated question or upon a simple statement of facts, and without investigation. I have, however, no recollection of the opinion, or of having given one.

4. I do not know that Primrose obtained the opinion of any counsel as to the Collins title before 1844. I have since been informed by him that he did, and the opinion was favorable to a recovery.

5. I knew of no such fact, and was not informed of it before 1844.

6. The purchase that was afterwards made by Thompson, I suppose was a matter of *speculation*. The balance of this interrogatory I answer in the negative.

7. I was not present. I first received my information from my partner, Judge Campbell, and afterwards I heard the parties in interest, except Campbell, speak of it.

8. The contract was not as I understood reduced to writing at first, I think it was afterwards modified, and reduced to writing. It is not in my possession. We received one thousand dollars in cash, and were to receive $20,000 if we succeeded in the case, for our services in the court below; this, I think, was the contract.

9. I was not present.

10. Mr. Collins during the pendency of the suit, seldom conversed with me on any subject; when, however, we met or conversed at all it was principally about the suit, and the prospects of recovery. The conversation was always general and a favorable opinion as to the result was mutually entertained and expressed.

11. We were acquainted, but not intimately, up to 1853.

12. I recollect no other cases of Mr. Collins in which we were employed by him, or consulted.

13. I was thrown more in Mr. Collins' company in 1853 and in 1854. I recollect of his consulting me in relation to the rents of the property, and bringing Cleveland to an account and settlement, as

stated in my answers to the 7th and 8th direct interrogatories. He consulted me two or three times on the subject. He paid no money for my opinion. I charged him nothing for any advice I gave; had I been employed I should have done so.

14. He consulted me in relation to the rents and a settlement of the accounts in the latter part of the year 1853, and first spoke about setting aside the settlement of February, 1851, late in the winter or early in the spring of 1854, to the best of my recollection. The conversations were in my office, and in the evenings.

15. My answer is in the negative, no such conversations took place, and I could have made no such answer, because (had there been no impropriety in my undertaking as an attorney to undo what my firm had assisted in doing) we had been the attorneys generally of the parties. I declined to be employed to bring Mr. Cleveland to an account and settlement for rents, until I could ascertain whether he desired the services of our firm.

16. In one of the interviews he did tell me that he wished to engage my services in the event he should bring suit against Cleveland for an account and settlement for rents, which he stated he would bring, if he could not otherwise effect a settlement.

17. He did not make such a statement on that occasion, but he did in substance subsequently when he wished to employ me and my firm to set aside the settlement of February, 1851.

18. Mr. Collins, on the occasion referred to, made no such a statement, nor did he when he wished to employ me, nor did I make any such remark as is stated in this interrogatory.

19. On the occasion referred to no such conversation took place, when he wished to employ me to set aside the deed of February, 1851, he did state, the deed was without consideration; that he was not in possession of the property; that he was deceived by the parties; that he was led to believe that Cleveland and Campbell (I do not recollect of his using the name of Thompson) had advanced large sums of money. He stated that Primrose had rendered important services, and the firm of Campbell and Chandler had done all he could have desired. The balance of the alleged statements of Mr. Collins, I do not recollect. I did not reply as he has stated. I never stated the deed could not stand, unless he had done something to ratify it.

20. I recollect no such statement being made by collins, and no such advice being given by me.

21. He made no such statement to the best of my recollection, and I did not advise him as stated in this interrogatory. I think it probable, I did suggest to him to notify the tenants to pay the rents to him, or a part of them, I know he consulted me on the subject, and after I understood Mr. Cleveland did not wish our services, I felt at liberty to give him on this subject advice.

22. I think it probable I told him to give the notice in writing, and to have proof of its being served. This advice was given upon

the supposition that we would be employed to bring Mr. Cleveland to a settlement for the rents, &c.

By reference to our books I find no charge made for any advice or opinion on the subject. When the character of the suit was changed, our connection with the plaintiff as his counsellors ceased.

23. Mr. Collins never informed me, that I recollect of, that the deed of February, 1851, was recorded, or request me to examine it, and give an opinion as to its validity, nor did I give an opinion as to its validity, or state "the danger to be guarded against was its ratification," and Mr. Collins did not state to me he wished to be protected against the deed of 1851, and should rely on me for advice on that subject.

24. The interrogatories from 15 to 23 do not contain the substance of the conversation between Mr. Collins and myself from November, 1853, till the latter part of February, 1854, as I have explained in my preceding answers.

25. I have no recollection of Mr. Collins bringing me the deed of February 15th, 1851, in February, 1854, or of his requesting me to introduce him to my partner Mr. Smith. He was acquainted with my partner before that time to the best of my recollection. I have no recollection of having introduced him as stated in this interrogatory.

26. Mr. Collins did not leave with me a copy of the deed of February, 1851, and have no knowledge of his leaving the deed with any member of my firm. I have understood on some occasion after this time, he left a deed with Mr. Smith, but when he left it, or what deed it was, I do not know. In February, I think, before he left for Texas, he did leave with me the papers annexed to Mr. Campbell's statement marked B, and request me to deliver it to him, which I did.

27. Mr. Collins after I declined to be employed to set aside the deed of 15th February, 1851, never spoke to me about the acts to be avoided to prevent the ratification of the deed. My services and advice were not sought or obtained after I refused to be employed to set aside the deed.

28. Mr. Collins, when he tried to employ me to set aside the said deed, and question its validity, and stated he wished to employ me to file a bill to set aside the deed, after I refused to be employed and my firm, he never sought my professional services with reference to such a suit.

29. When Mr. Collins wished to employ me as before stated, among my objections I stated that I should be compelled to make Judge Campbell, my former partner and brother-in-law a party, and to attack him. He said he did not think it was necessary. He had no charges to make against Judge Campbell, was satisfied with what he had done in the case, but thought he was mistaken as to the value of the property, and allowed Campbell and Cleveland too much. He did not question his honesty and did not think it was necessary

to make him a party. I did tell him that I did not see how he could bring such a suit as he wished to be brought without making Judge Campbell a party. I have probably made the statement to several. I know I did to Collins and my partners.

30. I know of none except advancing the money to prosecute the suit.

31. I know of none, except advancing with his partner money to prosecute the suit.

32. Mr. Thompson was the prominent man in the prosecution of the suit. He and Primrose rendered important services in procuring the evidence and in preparing the case for prosecution. I cannot state all he did, but he was active, vigilant and industrious in finding the witnesses, and preparing the proof for trial. I cannot state the value of his services in money. The suit without him and Primrose probably would never have been prosecuted and gained.

33. I did. And under the circumstances was surprised the parties would permit it. In my letter, from which an extract is given, I think I referred not to Campbell and Cleveland alone, but to the plaintiff also. It was the property, in part the fruits of our labor, that they were all enjoying, while they permitted the fee note to remain unpaid. Collins said Campbell and Cleveland ought to pay the note from the property, and Cleveland said Collins ought to pay it under some agreement of Collins and himself between them. I had a right to complain, and did complain of all the parties.

34. They were. The original mortgage is annexed to my answer, marked Exhibit A.

35. I answer in the affirmative.

36. I do not of my own knowledge know the facts. I have understood they receive a part of the rents, the amount I have not heard.

37. I do not recollect who paid the first two notes. I think they were paid in bank. The last was settled in June, 1856, with Mr. Collins. Not being able to get the money, I took a portion of the property recovered by Collins of the executors and heirs of Kennedy, in satisfaction of the two last notes.

38. After the bill was filed, the engagement was made with Mr. Smith. I do not recollect the day, but I know it was after the bill was filed, he secured the services of our firm. Cleveland had also said that he should expect to employ us.

39. It was. It was forwarded to let Judge Campbell know the allegations of the bill, and what was said against him. It was forwarded by James H. Campbell at my request. I wrote Judge Campbell as soon as the bill was filed, and stated a copy would be sent as soon as it could be made out.

40. It was forwarded to me, and received by me in January, 1855, with a request to annex it to the answer of one of the defendants.

41. The said written statement was read by the members of my firm, and by James H. Campbell. My partner, Mr. Smith, drew

the answers of Thompson and Cleveland. I don't know whether he used the statement of Judge Campbell or not. I suppose he did. I should have done so, had I prepared the answers.

42. I do not know. I did not draw either of the answers, and was not present when the defendants answered.

43. Judge Campbell has been written to freely and fully in relation to the suit. He was grossly assailed, and though not a party to the bill, his motives and acts were attacked. He has given us his views, and has made suggestions as to the defence of this suit, which we have duly considered.

44. Judge Campbell has been advised regularly of the progress of the suit, and has made suggestions as to the defence; but I do not suppose he has done all he was capable of doing for the defence.

45. It was not. It was sent to let him see how grossly and falsely he was assailed and misrepresented, and to let him know the character of the suit.

46. Mr. Primrose, to secure me for money advanced for him, and property exchanged with him, did convey to me all his right, title, and interest in the property lying between Royal Street on the west, Water Street on the east, St. Anthony Street on the north, and St. Louis Street on the south. I have conveyed all this property, by deed properly executed and acknowledged, to my children, and have no interest in it. The plaintiff knew before his bill was filed that I had an interest in the property, and had received a deed from Wm. D. Primrose, and was known and recognized by him, and the other parties in interest, as being interested in the property, having purchased a part of William D. Primrose's interest.

DAN'L CHANDLER.

Exhibits to the Testimony of Daniel Chandler, viz:—

Exhibit A.

This indenture, made this 2d day of June, in the year of our Lord one thousand eight hundred and fifty-one, between Sidney E. Collins, James Campbell, Drury Thompson, and William F. Cleveland of the first part, and Daniel Chandler of the second part, all of the county of Mobile, witnesseth that the said parties of the first part, for and in consideration of the sum of twelve thousand and four hundred dollars, lawful money of the United States, to them in hand well and truly paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the first part therewith fully satisfied, content, and paid—have granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, convey, and confirm to the said party of the second part, his heirs and assigns forever, all that certain tract, piece, parcel, or lot of land and premises, situate, lying, and being in the city of Mobile, and bounded on the west by Royal Street, on the north by St. Anthony Street, on the east by Water

Street, and on the south by St. Louis Street, together with all and singular the tenements, hereditaments, rights, members, privileges, and appurtenances to the same belonging, or in any wise appertaining. To have and hold all and singular the above described tract, piece, parcel, or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do hereby covenant with the said party of the second part, and his heirs and assigns, that they are lawfully and in fee of the premises above described, that they are free from all incumbrances, and that they have good right to sell and convey the same to the said party of the second part as aforesaid, and that they will, and that their heirs, executors, and administrators shall warrant and defend the same to the said party of the second part, his heirs and assigns forever, against the lawful claims and demands of all persons. Provided always, and these presents are executed upon this condition, that if the said parties of the first part, their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid to the said party of the second part, his certain attorney or attorneys, heirs, executors, administrators, or assigns, the sum of twelve thousand and four hundred dollars, due by five certain promissory notes, bearing even date with these presents, made by James Campbell, one of the parties of the first part, and endorsed by Sidney E. Collins, another one of the said parties of the *second* part, all negotiable and payable at the Bank of Mobile—one due twelve months after date for two thousand one hundred and sixty dollars, the second one due two years after date for two thousand three hundred and twenty dollars, the third one due three years after date for two thousand four hundred and eighty dollars, the fourth one due four years after date for two thousand six hundred and forty dollars, and the fifth note due five years after date for the sum of two thousand and eight hundred dollars, as by reference to the same will fully appear. That then, and from thenceforth these presents and said notes, and everything herein and therein contained shall cease, determine, and be null and void, or else to be and remain in full force and virtue.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

(Signed) S. E. COLLINS, [SEAL.]
W. F. CLEVELAND, [SEAL.]
JAMES CAMPBELL, [SEAL.]
DRURY THOMPSON, [SEAL.]
[SEAL.]
[SEAL.]

Signed, sealed, and delivered in presence of.

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that on the day of the date hereof, before me, George Conway, a Notary Public in and for Mobile County, and State aforesaid, personally came and appeared the within named Sidney E. Collins, William F. Cleveland, James Campbell, and Drury Thompson, who acknowledged that they signed, sealed, and delivered the above deed of mortgage to Daniel Chandler, on the day and year, and for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and seal official, the nineteenth day of July, in the year of our Lord one thousand eight hundred and fifty-one.

[SEAL.] GEORGE CONWAY, *Notary Public.*

Indorsed on the back of said deed, "Received for record, August 19th, 1851. E. RUST, *Judge.*"

"Recorded in book 15, pages 670 and 671.
E. RUST, *Judge.*"

"Exhibit A to D. Chandler's deposition.
R. B. OWEN, *Commissioner.*"

(See admission of handwriting of mortgage, pa. 1225.)

Exhibit B.

Collins's Letter to Primrose.

LIBERTY, May 12th, 1850.

DEAR SIR: I have received J. A. Campbell's brief and two papers, on the envelope of which I think I recognize your hand, for which favors you have my thanks. The brief has satisfied me fully of the merits of the case. Since the receipt as above, I received a long letter from you, dated April 25th. Not having time to answer you at length, I will say that I am well aware of the truth of the most of your suggestions, and I have ever been of the opinion that you and my friend Mr. Thompson were materially interested in the matter. (Confidentially, how is this?) You have done too much to give up ship at this stage of the case without compensation; therefore follow it up, and at the end, if it should result in my favor, you will not (and shall not) be forgotten *by me*. My health is better this season than it has been for many years, thanks to *God* and *hydropathy* (water-cure). One of my children is slightly attacked with fever. With that exception, the health my family is good. More anon.

Yours in truth, SIDNEY E. COLLINS.

P. S. Our mails are so uncertain that I fear you will not get this before the case comes up, therefore fearing it might fall into other hands in your absence.

WM. D. PRIMROSE, Esq., Mobile, Ala.

"Exhibit B to D. Chandler's deposition.
R. B. OWEN, *Com.*"

Exhibit C.

Printed brief in Supreme Court of the United States, in case of Sidney E. Collins *vs.* Hallett and Walker *et al.*, by J. A. Campbell, of counsel for plaintiff, 1850.

Indorsed, "Exhibit C to D. Chandler's deposition.

R. B. OWEN, *Com.*"

(See agreement as to printed record, page 1893.)

Exhibit D.

The printed record in the Supreme Court of the United States, case of Joshua Kennedy's Heirs and Executors, appellants, *vs.* Sidney E. Collins. Appeal from the Circuit Court U. S., Southern District of Alabama. Extracts from which are to be furnished by the parties as testimony. See agreement on the trial, page 913.

Indorsed on the said printed record, "Exhibit D to D. Chandler's deposition. R. B. OWEN, *Commissioner.*"

The foregoing deposition of the witness Daniel Chandler, Esq., was taken, subscribed, and sworn to at the city of Mobile, on the fourteenth day of March, A. D. 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in said cause.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

Agreement signed on the Trial, to wit:—

SIDNEY E. COLLINS
vs.
D. THOMPSON *et al.* } In Equity.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Judicial Circuit, Southern District of Alabama.

It is admitted, on the hearing, that the body of the mortgage attached to D. Chandler's deposition, made to secure his fee, is in the handwriting of D. Chandler, Esq., except the parts in print, it being a printed form filled up.

CHANDLER, SMITH & HERNDON,
for Defendants.
K. B. SEWALL, J. T. TAYLOR,
for Complainant.

Filed 28 April, 1857. GEO. E. HOLT, *Clerk.*

The defendants furnished no extracts from the record in the Supreme Court, Kennedy's Executors and Heirs *vs.* Sidney E. Collins. See agreement to use said record on the trial of this cause in the Supreme Court of the United States, page 1893 of this transcript.

Attest, GEO. E. HOLT, *Clerk.*

No. 5. *Interrogatories to be propounded to Robert H. Smith, a Witness, at the Instance of the Defendants in said Cause.*

1. Do you know the parties to this suit? If yea, state their names in full.

2. What is your profession, of what firm are you a member, and to whose business did you succeed when you became a member of your present firm? And when did you become associated with Daniel Chandler?

3. Were you or your firm ever called on by the complainant for counsel and advice touching or referring to the subject-matter of this suit? If yea, please state what the subject-matter of the suit is, and state the subject that complainant wanted counsel about, and state the time of his application as near as you can.

4. When complainant first called on you for counsel, was it in view of setting aside the deed of partition he seeks by his bill to set aside, or was it in view of ascertaining and asserting his rights under the deed? State fully the object the complainant had in view, or that he said he had in view, and then state whether he obtained any counsel from you or your firm respecting the same.

5. Were you ever called on by complainant, afterwards, to undertake to set aside the deed above referred to? If yea, was it after complainant had applied to you for counsel respecting his rights under the deed?

6. State the result of his application to employ you to set aside the deed, and the conversation you then had with the complainant, if any.

7. When you and your firm gave complainant advice touching his rights under the deed, was there any dissatisfaction expressed by him to the deed, and division of the property as made by him and Campbell, Cleveland, and Thompson? If you answer there was no dissatisfaction expressed, then state the cause of his complaint.

8. State any other matter, within your knowledge, that will go to show that the complainant was satisfied and content with the partition deed he now seeks to *set aside*, until about the time he applied to your firm to employ you to set aside said *deed*.

DARGAN & HALL, *Sol'rs for Defendants.*

9th and concluding interrogatory. Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If so, set forth the same fully and at large in your answers.

DARGAN & HALL, *for Def'ts.*

Filed 25 November, 1856. GEO. E. HOLT, *Cl'k.*

Cross-Interrogatories propounded to said Witness by the Complainant in said cause.

1. When did you first become acquainted with the complainant in this case? Set forth who introduced you, and when?

2. How many interviews did you ever have with the complainant, and when and where did they occur?

3. Did not your first introduction take place in your office in Fe-

bruary, 1854? Was he not introduced by Mr. Chandler, your partner?

4. Did not Mr. Collins, on this occasion, refer to his having engaged Mr. Chandler, and say, on handing you a copy of the deed of 15th February, 1851, Here is the deed he wished to be protected against, which Thompson, Cleveland, and Campbell had obtained from him? that he believed they had defrauded him, and he might have to question its validity? That they had pretended they had done large services, and paid large sums of money; but, so far as he could learn, it was not so.

5. Did not Mr. Collins go on to state the grounds on which he thought said deed voidable?

6. Did he not say he wanted your advice in the matter, and to be kept from doing anything that could operate as a ratification of said deed?

7. Did he not also state that he was going to Texas, and did he not leave the copy deed with you for your consideration?

8. Did he not further say, he thought the whole property his, in good conscience and moral honesty, and that if, on investigation, it should be found otherwise, he did not want it?

9. Did you ever have any other interview than this with the complainant? If yea, when and where?

Mr. Smith is required to answer, in addition to these, the 36th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, and 45th cross-interrogatories above propounded to Daniel Chandler.

K. B. SEWELL, *of Counsel for Complainant.*

Filed 6 December, 1856. GEO. E. HOLT, *Clerk.*

Additional Cross-Interrogatories, as above required to be answered by said Witness.

36. Do you not know that the defendants, or Campbell and Cleveland, have been receiving, and are now in the receipt of two-thirds of the rent of said property recovered by Collins, which two-thirds amount to about ten thousand dollars a year?

38. When were you, or your firm employed by Campbell & Cleveland, in anticipation of the pending litigation? State, as near as you can, the day, month, and year.

39. Was not a copy of the bill in this case forwarded to Judge Campbell at Washington, in December, after it was filed? If yea, for what purpose was it forwarded, and by whom, and at whose instance or request?

40. Was not Judge Campbell's written statement and argument in reply, forwarded to the counsel of the defendants, or some of them, and when was it received?

41. Was not said written statement and argument perused by counsel for the defendants, and were its contents not known to those who drew the answers, and was it not used in drawing said answers?

42. Was not said written statement of Judge Campbell read to, or

read by some, or all of the defendants, or which of them, before their answers were made?

43. Has not Judge Campbell been consulted as to the defence in this case, and his opinion obtained?

44. Has not Judge Campbell been kept advised of its progress, and has he not done all he was capable of for the defence?

45. Was not a copy of the bill sent to Judge Campbell in order that the defendants might have the benefit of his reply, before they should be required to answer.

No. 5. *Deposition of Robert H. Smith.*

The said witness, in answer to the several direct and cross-interrogatories propounded to him as aforesaid, deposeth and saith on oath, as follows:—

1. I know the parties to this suit; Sidney E. Collins is complainant, Drury Thompson, William F. Cleveland, and James Campbell are defendants.

2. I am a lawyer, and a member of the firm of Chandler, Smith, & Herndon. My partners are Daniel Chandler and Thomas H. Herndon. My firm succeeded to the business of John A. Campbell and Daniel Chandler, which last-named gentlemen composed the firm of Campbell & Chandler up to the time the Hon. John A. Campbell was appointed an Associate Justice of the Supreme Court of the United States. I became a member of my present firm early in April, 1853. In 1847, I met Dan'l Chandler in Boston, and formed a hotel acquaintance with him for a few days. I do not remember having seen him from that up to the formation of our partnership. At this time I was called upon by Mr. Chandler, and introduced to him.

3. The subject matter of this suit is certain real estate in the city of Mobile, which was recovered by Sidney E. Collins of the executors and devisees of Joshua Kennedy, in the Circuit Court, and Supreme Court of the United States. The object of the suit is to set aside a conveyance of an interest in this property made by complainant to defendants. During the winter of 1853–54, and probably later, complainant was occasionally in our office, and in conversation with my partner, Mr. Chandler. I think that on one or more of these occasions I heard their conversations and that they related to a contemplated suit by Collins against Cleveland for the settlement of an account growing out of his and Cleveland's management of the before-mentioned property. Mr. Collins supposed that he and Cleveland might have a law suit about said matters, and wished our firm to represent him. I do not know that Collins directly consulted me in reference to this matter. My recollection is that Chandler expressed to Collins an unwillingness to represent either party to the controversy. Such I know was his inclination. I have an impression, that Mr. Collins on one or more occasions spoke to me directly on the same subject, and that I intimated to him my

own inclination to accept his offer of retainer in that matter. I will not positively assert such to be the fact, because Mr. William D. Primrose frequently spoke to Chandler and to me, professedly for Mr. Collins in that connection, and it may be, that I attribute to Mr. Collins, conversations held with Mr. Primrose in reference to filing a bill for an account. The interview above spoken of as having been between Collins and Chandler, may also have been with Mr. Primrose professing to act for Collins. Subsequent to the interviews first above spoken of, I think some time in the winter of 1854, 1855, Mr. Collins called into our office after tea. He was for some time in conversation with Mr. Chandler, when the latter walked into my room, Collins remaining where he was, and said to me, that Collins wished to file a bill to set aside the conveyance he had made to Thompson, Cleveland and Campbell; that he had told Mr. Collins he could not be retained to file such a bill; Chandler said further, that Herndon and myself were strangers to the suit of Collins and Kennedy *et al.*, that he would release us from any obligation we might feel under as his partners, so far as this matter was concerned, and that Collins had requested him to offer me a large fee (naming the sum) to file the bill for him. I was busy, and (as I remember, without laying down my pen, and scarcely pausing from my occupation) declined the offer. Mr. Chandler passed back into his room, which was separated from mine by folding-doors which were open, and I heard him announce my declension to Mr. Collins. Upon Chandler's return and announcement to Collins, he (Collins) walked into my room, and renewed the offer. I promptly rejected it. Collins (standing before my fire) attempted to induce me to accept the case from him, repeating the offer conveyed by Chandler. He said he did not call in question the integrity of Hon. John A. Campbell's action, and passed an eulogium on his ability and integrity. I again declined to accept his case on any terms. The dividing line between my knowledge of the two positions occupied by Collins; that is, between his proposition to call Cleveland to a settlement, and his later one of seeking to set aside the deed, are distinct in my mind.

4. If I am not mistaken as to the fact, that the interviews preceding the last-mentioned one with Collins before spoken of, were with Collins instead of Primrose, then, when I first heard Collins calling on my firm for counsel, he was doing it with the view of ascertaining and asserting his rights under the deed which this bill seeks to set aside. I have no recollection that Mr. Collins ever obtained from me any advice in either aspect of the case. When I declined accepting a retainer from Mr. Collins as before stated, he expressed regret that he could not obtain the services of my firm. Mr. Collins was not charged on our books for any advice, fee, or other matter appertaining to, or connected with his cause, in any respect. He would have been, had I supposed he stood in the relation of client thereto.

5. My answer to the 3d interrogatory is a full answer to this. I

refer to, and adopt that as an answer to this interrogatory. I have no means of computing or estimating the time between the applications of Collins to enforce his rights under the deed, and to set it aside.

6. I have before stated that I declined Mr. Collins's offer of a retainer to set aside the deed, and have set forth what was said.

7. I remember to have heard complainant express no dissatisfaction with the deed or division of property, until he applied to me to file a bill to set it aside, as I have before stated. The cause of his original complaint was the want of an account and settlement under the deed. This is answered subject to the qualifications before made, that it is possible I may confound Primrose's with Collins's conversations on the subject.

8. I remember nothing more that will benefit either party, save what will be contained in my answers to the cross-interrogatories.

Answers of the said Witness to the Cross-Interrogatories.

1. I think I became acquainted with Sidney E. Collins in the spring or early in the summer of 1853. I have no recollection of having been introduced to him. He had a small case or two in the hands of Campbell & Chandler; one of these came particularly into my care, and thus I was thrown into connection with him.

2. I do not remember the number of interviews I have had with complainant. Those I have had were at my office in Mobile. I have had several. I have before stated particularly my interviews in reference to the subject matter of this suit. I had several interviews about other matters.

3. I may have been introduced to Mr. Collins by Mr. Chandler, in February, 1854. I have no recollection of it, and knew him and had transacted business with him before this time.

4. Collins held with me no such conversation as is mentioned in this cross-interrogatory. He at no time referred to having engaged Mr. Chandler, but at the interviews, when he sought to retain me, repressed his regret at being unable to engage the services of our firm. He offered to engage me as I have before said, and pressed upon me the acceptance of his cause. I think this interview was in the latter part of 1854 or early in 1855, but I have no data by which I can fix the date. At the interview before mentioned by me, Mr. Collins held no such conversation as he inquires about in his fourth interrogatory. The conversation was as brief as I could make it. I declined peremptorily, was busy, and felt disinclined to prolong the interview. On one occasion, Mr. Collins handed or read to me a letter which he said was a copy of one he had written to Hon. John A. Campbell, and at the same time he left with me some paper, which he said was a deed. He wished me to read the deed, but for what object I cannot remember. I heard about this time that he was crazy or drunk. Such was the rumor; on this account I paid little attention to him, further than to listen to, or read myself, the

letter. I placed the papers in my desk, and I think I never opened them. Several months after, he called for them, and they were mislaid. Mr. Herndon looked them up, and handed them to him. Collins, I am pretty sure, read the letter to me. Its contents struck me, in connection with the rumor I have spoken of. Since I began to frame my answers to this deposition, I find in the office a paper in Mr. Collins's handwriting, a copy of which I hereto attach, marked Exhibit A, and which I recognize to be the substance, and I believe a copy of the letter Collins read or handed to me. I think Collins did complain at the time that defendants had defrauded him, but I cannot possibly remember what he said. The conversation was gratuitous on the part of Mr. Collins, was listened to reluctantly by me. The letter, and the fact that he entered upon a sort of moral justification of himself, and pressed his letter and paper on me, taken in connection with the rumor before spoken of, produced on my mind the impression that he had gone crazy. I merely state the impression on me at the time, as one reason why I paid little attention to the conversation, and why I am unable to give it with more distinctness.

5. I do not remember.

6. I think he said no such thing. I think it was before this he had applied to me, and I refused to act for him.

7. I think he said he was going to Texas. He left some paper with me, and I think he said it was a deed. I have no recollection of having opened the paper. I think he wished me to examine the paper, but I do not remember the particular purpose for which he wished me to do so.

8. I think he did express the idea and employ the words contained in the 8th cross-interrogatory; I think was a part of a course of moral reflection to which he was giving expression.

9. I did. I have before mentioned them, and stated when they took place, and the times as near as I can.

36. I have no knowledge of the matters inquired about in this interrogatory. As solicitor for defendants in this case, I have received from my clients professional communications touching this matter.

38. Neither I, nor my firm, were employed by Campbell and Cleveland in anticipation of the pending litigation. In the spring or summer of 1855, the fact that the bill was about to be filed, was a matter of notoriety. During that summer, or in the fall of 1855, Mr. Thompson, and I think Mr. Cleveland, expressed a desire to obtain the services of my firm in defending the case. After the bill was filed we were employed by these gentlemen to defend them. I do not remember the day nor month. The contract was made with me. Mr. James Campbell employed our firm through me shortly after. After I had drawn the answers of Thompson and Cleveland, his son, James H. Campbell, Esq., employed me for his father.

39. Not of my own knowledge, though I have no doubt but a copy of the bill was furnished to Judge Campbell by his brother-in-law and

late partner, Mr. Chandler. I have no doubt but it was sent in order that Judge Campbell might see the grossly malignant attack made on him by the bill. I know of no other reason.

40. Mr. Chandler had in his possession a written statement from Judge Campbell similar to that appended to James Campbell's answer, though it was not so full. It was furnished to me, but I think was sent to Mr. Chandler. I requested to be allowed to peruse it, and the request was granted. I saw it before I drew the answers in the cause; the date I do not remember.

41. I drew the answers of Thompson and Cleveland. James H. Campbell, Esq., drew his father's answer. I had, and I think James H. Campbell had, perused Judge Campbell's statement before the answers were drawn. Its contents were known to me when I drew the answers. I occasionally called my clients' attention to parts of it, when drawing the answers. In drawing the answers, much had to be examined into, thought over, called to mind, and considered; any source of information, or any that could refresh the memory, was adverted to. In this manner, and for such purposes, Judge Campbell's statement was occasionally, but rarely referred to.

42. I read the written statement of Judge Campbell to Thompson, and probably to Cleveland, before the answers were drawn. I did it just as I should have requested two persons who had participated in matters past, and in respect to which allegations against them, were made to converse together, and refresh their memories by an interchange of recollection.

43. Not that I know. The defence has in a good measure been intrusted to me, and I have acted on my own views of what was proper to be done, up to the time the answers were filed. I had no intercourse with Judge Campbell on the subject further than this; on reading the bill, I addressed to him a letter, expressing the opinion that the attack upon him was the most unmitigated outrage I had known, committed under cover of legal proceedings. I conveyed in that letter, my assurance that it would be my pleasure to see full justice done him in the defence. Since the proofs have been in progress, I have written Judge Campbell several letters expressive of my views and purposes in the cause, he has answered them, but has not proposed to make out or direct what I should do. So far as the defence rests with me, it has received the direction and course prompted by my own judgment. In doing justice to Judge Campbell in the defence, I should not scruple to consult with him as to any matter I might deem important, and I would pay great respect to any suggestions he might make. I have in matters appertaining to him, personally acted on suggestions from him.

44. I have no doubt but Judge Campbell has kept himself advised of the progress of this cause, and that he has greatly interested himself in repelling the gross charges made against him by the bill. I have not kept him advised; I have occasionally written him

of its progress, and of my views and purposes in conducting the defence. I have done it voluntarily, and as act of justice to him.

45. I answer distinctly, that a copy of the bill was sent to Judge Campbell for no such purpose as is intimated in the cross-interrogatory. The answers were deferred in no expectation of any response to this bill from Judge Campbell, for no purpose of obtaining such. The drawing of the answers was devolved on me; as soon as my firm was employed to defend the case, I drew them at as early a day as my other engagements, and my proper mastery of the case allowed, and at no period was the time of the preparation, or filing of the answers influenced or made to depend upon any communication expected to be had with or from Judge Campbell. His statement came before I drew the answers, and I applied for and obtained it, examined and used it as I have before said. ROBT. H. SMITH.

The foregoing deposition of Robert H. Smith, Esq., was taken, subscribed and sworn to, at the city of Mobile, on the 16th day of December, 1856, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause, and filed 7 April, 1857.
GEO. E. HOLT, *Clk.*

Exhibit A, to the deposition of Robert H. Smith.
(*Copy*).

1. Collins thinks the property is his in good conscience and moral honesty.

2. Is perfectly satisfied with his att'ys and their fee, and will pay it.

3. If others are not satisfied and seek farther arbitration, Collins respectfully asks the privilege to read the high law to arbitrators which is "render to *Cæsar* the things that are *Cæsar's*," for *Cæsar* has his master to whom he *must*, &c., and wishes all parties concerned not to forget another high law which reads, "Do unto others as you would" (wish were you in his condition and he in yours) they should do unto you. Collins heard of an expression of regret coming from one for whose good opinion Collins has a very high regard; the regret "would freely give 10,000 dollars he had never had anything to do with the Collins case." Now, if the regret arises from the merits of the *case*, or any act done (or consented to) by Collins, he begs to know the cause. But if the regret is caused by any bad words or acts of other (*wicked* and *designing*) men, then, in that case, Collins begs leave to demur, for there is no law warranting the punishment. Collins or his interests for the *rongful* acts of other men, unless it be the law of "poor Tray," and the Collins case is not parallel—"Tray" had the choice of his company, *Collins had not*. One kind and respectful suggestion to the attorneys for plaintiff. If your *motive* in undertaking the cause of pl'ff was mainly the *fee*, the motive was a sordid one, and will perish with the fee; but if the motive was mainly to restore the injured orphan to his rights, and

punish the guilty for his unholy acts, then your motive will live while this world shall last, and *still live* while God and eternity shall exist. Yours and Christian meekness.

("Exhibit A to deposition of Robert H. Smith, (Sg'd) R. B. OWEN, *Comm'r.*")

No. 6. *Interrogatories to be exhibited to Cornelius B. Payne, of the City of New Orleans, a witness for the defendants in the said cause.*

1. Are you acquainted with the parties to this suit, and did you ever see the complainant? If so, state the time.

2. Were you interested in, or connected with the line of mail steamers plying between Galveston, in Texas, and New Orleans, in February, 1851, and are you so now? What vessels arrived in New Orleans from the 1st to the 15th February, 1851, inclusive, and what was the date of their arrival respectively?

3. Do the firm of Harris & Morgan preserve lists or manifests of the cargo and passengers made up at the end of every trip and return to them? State if you have such lists of those dates, and by whom made.

4. Will you state whether any passenger by the name of Sidney E. Collins, or by the name of Collins, appears on the list or manifests of either of the boats, and of which, and when did that boat leave Galveston and arrive in New Orleans?

5. What was the most usual mode of travel between Galveston and New Orleans in February, 1851? Were there any arrivals in New Orleans of passenger boats except those you have mentioned, from Texas between the dates above specified?

6. Please annex a list of the passengers, or a copy of the manifests of the boats which came from Galveston to New Orleans between the dates specified.

7. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Solicitors for Defendants.

Filed 6 December, 1856. GEO. E. HOLT, *Clerk.*

Cross-interrogatories to the said Witness on the part of the Complainant.

1. Has John A. Campbell, a Judge of the United States Court, called on you or written to you in regard to said Sidney E. Collins? If so, state when, and if he wrote you, attach his letter or a copy of it. If it was a personal application, state the subject and purport of it.

2. If the manifests of your steamships contain only the name

Collins, how can you know what Collins, or whether his Christian name is Sidney, or Samuel, or John?

3. Is Collins an unusual name; are there not many of the name in the United States?

K. B. SEWALL,
Of Counsel for Compl't.

No. 6. *Deposition of Cornelius B. Payne.*

The said witness answers and says on oath—

1. To the first interrogatory. I am not acquainted with the parties to this suit. I do not know whether I have ever seen the complainant or not. If I have I do not recollect him.

2. To the second interrogatory. I was principal clerk and manager for Harris & Morgan, owners of the mail line of steamers running between Galveston, in Texas, and New Orleans in Feb'y, 1851; the same line is now owned by an incorporated company of which I am a member, and for which company I am, with Harris and Morgan, agent and manager, Messrs. Harris and Morgan both being absent at present, and most of the time. The steamship Louisiana left Galveston on the 3d of February, 1851, and arrived in New Orleans on the 5th day of that month. The steamer Galveston left Galveston on the 7th of February, 1851, and arrived in New Orleans on the 9th or 10th day of that month. The steamship Globe left on the 14th of February the city of Galveston, and arrived on the 16th or 17th of that month, and in the year 1851. These were the regular times for the departure and arrivals of the steamships of the line, as I ascertain their arrival and departure from manifests and papers in the office. No other steamers from Galveston arrived at New Orleans between the first and 15th days of February, 1851, except those named as above; there was no other line running between the ports of Galveston and New Orleans.

3. To the third interrogatory, he says: The firm of Harris & Morgan usually preserve lists or manifests of the cargo and passengers on their ships. These manifests are made up by the clerk of each ship at the end of every trip, and are handed to our house, where they are filed away. I have now in my possession manifests of the ships and dates referred to by me, and they were made out, as stated, by the clerks of each of said boats.

4. To fourth interrogatory. It is not usual to take the first name of passengers presenting themselves on our boats, nor is the first name usually placed on the manifest. On the manifest of the steamer Louisiana, which left Galveston on the 3d of February, and arrived in New Orleans on the 5th of that month, the name "Mr. Collins" appears. The name of Collins does not appear on the manifest of the other steamers arriving in New Orleans between the first and fifteenth of February, 1851. This steamer left Galveston as stated, and arrived at New Orleans on the 5th of February, 1851 (in the morning, I presume), as the usual time of passage of our

steamers from Galveston to New Orleans was from thirty-six to forty hours.

5. To fifth interrogatory. Almost the entire travel from Galveston to New Orleans in February, 1851, was by our line of steamers. There was no arrival in New Orleans of passenger-boats except those named by me.

6. To 6th interrogatory. I hereto annex a copy of names of passengers on each of the steamships named by me at the dates specified.

On the steamer Louisiana, which left Galveston on the 3d of February, 1851—

Thomas B. Power, lady, and two children,
Miss C. Rea,
Miss Harper,
Mrs. Jeny Smith and child,
Mr. and Mrs. Stockbridge,
W. L. Tourne and 3 children,
Mr. Blood, lady, and 2 children,
John James,
N. M. Walverton,
Mr. Adams,
Mr. Jennings,
A. G. Owen,
Mr. Fenner,
Mr. Croft,
Mr. McCroskey,
Mr. Saltmarsh,
J. M. North,
J. D. Merritt,
Mr. Dickerson,
J. Marshall,
E. Tenyck,
Mr. Valentine,
Mr. Owen,
Mr. Briggs,
Mr. Nance,
D. Thuller,
Miss Stickney,
Mrs. Owen,
Mrs. Graham,
Mrs. Wharton,
Mrs. Moore,
Mr. Collins,
W. H. Merrill,
M. Brothers,
T. J. Williams,
T. T. Denott,
Mr. Eiglehart,
Mr. Whitney,
E. Squires,
Mr. Boykin,
Mr. Burnett,
S. P. Sandford,
Mr. McKinney,
J. S. Hanna,
Mr. Granger,
Mr. Rotchford,
Dr. Holland,
J. H. Pickens,
D. R. Cole,
Mr. Robertson,
C. C. Crodwell,
J. B. Isle,
J. B. Rogers,
Wm. Robinson,
J. S. Brown,
Mr. Medley,
Mon. Belt,
Lewis Moreland,
H. Emmerson,
H. H. Miller,
W. McClene,
Judge Johnson,
Mr. Wharton,
J. M. Hayes,
Mr. Hereford,
Mr. Wilson.

This list embraces the names of passengers on the steamer Louisiana on the trip named and described above. The manifest of the steamship Galveston, which steamer left Galveston on the 7th day

of February, 1851, and arrived in New Orleans on the 9th or 10th of that month, shows that the following passengers came on her:—

Miss Maxwell,
Miss Stentimer,
Mrs. Maxwell,
Mrs. McMorris,
Mrs. Crow,
Mrs. King,
Allen,
J. P. Carr,
H. M. Boggers,
McManning,
Johnston,
Van Vachter,
J. G. Wilson,
Mrs. Wahn,
Mrs. Gully and child,
Mrs. Clemons and serv't,
Messrs. Gully,
D. Wherrode,
Ben. Wright,
Perser,
Brittar, and
Rev. Percht.

The manifest of the steamer Globe shows that the following passengers came on her on the trip made from Galveston on the 14th, arriving at New Orleans on the 17th or 18th of that month, and in the year 1851:—

J. N. Longstreth,
H. Graham,
J. P. Bullock,
J. Chilsett,
C. W. Gould,
Dr. Cooper and lady,
Capt. J. O'Donnell and lady,
Mr. Hershine,
Mr. Ravenna,
Mr. Bareslobe,
F. W. Boyle,
Smith,
R. O. Tandy.

The above are true and correct lists of all the passengers on said steamers at the times stated.

7. To the seventh interrogatory. I do not know any other matter or thing that can aid the defendants in this suit.

To Cross-Interrogatories.

1 Cross-interrogatory. Judge John A. Campbell wrote a note to the firm of Harris and Morgan, requesting information about Mr. Sidney Collins, asking if such person arrived in any of our steamships in February, 1851; and if so, at what time and on what ship. I have not the letter now. This was all that it contained. I think that it was written in the spring of this year, 1856. One of the young men in the office was directed to examine and give Judge Campbell the information desired. I do not now remember which one of the young men in the office.

2. To second cross-interrogatory. The manifest of the steamship Louisiana only contains the name "Mr. Collins." I do not pretend to know what his first name was, whether Sidney or not.

3. To the third cross-interrogatory. I have known several persons bearing the name of Collins, and I should not think it an unusual name.

CORN'S B. PAYNE.

The foregoing deposition of Cornelius B. Payne was taken, subscribed, and sworn to, at the City of New Orleans, on the 26th day

of December, 1856, before Thomas L. Bayne, Esq., a commissioner appointed to take testimony in the cause aforesaid.

Certificate by Commissioner.

I further certify that I am informed and believe that the other witnesses named in the commission, J. C. Harris, H. R. Morgan, and Charles Vidor, are absent from this State.

THOMAS L. BAYNE, *Com'r.* [SEAL.]

Filed December 29th, 1856. GEO. E. HOLT, *Clerk.*

No. 7. *Interrogatory to be exhibited to Thomas S. Bates, a witness for the Defendants in the said cause.*

1. Do you know the parties to this suit?
2. What steamers ran between New Orleans and Mobile in February, 1851, and did passengers from New Orleans to Mobile usually travel on the mail steamers or the boats you have mentioned?
3. What office did you hold on said boats in February, 1851, and particularly on the 5th of February, 1851? Did the said boats have or keep a list of, or register, or a book containing the names of the passengers on said boats? If so, will you state whether the plaintiff, or a man by the name of Sidney E. Collins, or Collins, was a passenger on either of said boats. State which one, when the boat left New Orleans, and when she arrived in Mobile.
4. Will you give a list, or the names of the passengers on the boat that left New Orleans for Mobile on the fifth of February, 1856 (1851)? State the name of the boat; and was not the plaintiff a passenger on said boat on that trip?
5. State what was the usual mode of travel between New Orleans and Mobile in February, 1851; was it or not on the mail steamers?
6. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Solicitors for Defendants.

Filed 8th January, 1857. GEO. E. HOLT, *Clerk.*

Cross-interrogatories by the Complainant to the said Witness.

1. If you know the complainant in this suit, state when you first knew him, or whether you know him at all.
2. If you state that the complainant was a passenger on a boat from New Orleans on the 5th of February, 1851, state how you know it was the complainant, and not some other person giving the name of Collins?
3. Examine the list of passengers by said boat that you were on for each trip between the 5th and the 15th days of Feb'y, 1851, and

state whether the name of Collins does not appear upon them or some of them, and which, and whether in your own handwriting.

4. Is there not, on one of those lists, the name of Collins for three passages all together, and under date of the 13th or 14th of February, 1851? And if so, do you know their Christian names, or whether the persons thus represented all bore the name of Collins, or only one of them? Are not passages for several different persons often taken in one name?

5. Was there not a line of steamers running between New Orleans and Mobile in February, 1851, besides the mail steamers, the line that formerly belonged to Gilbert, and did not the boats of this line leave at a different hour, and from the Basin? What was the name of these boats, and did they not carry passengers?

6. If you speak of the register of a mail steamer kept by you in 1851, and to which you refer for a list of passengers, please state whether the defendants in this suit, or any, and which of them, called your attention to it. And stated what was in it, and when he requested you to go and examine it. And when you found it, was it in the possession of defendants, or any of them, or their counsel? Was it in its proper place of custody or not?

K. B. SEWALL.
Of Counsel for Compl't.

Filed 23d January, 1857. GEO. E. HOLT, *Clerk.*

No. 7. *Deposition of Thomas S. Bates.*

The said witness to the direct and cross interrogatories answers and says on oath:—

1. I am acquainted with the defendants.

2. The steamboat Florida was one of the steamers which ran between the ports inquired of in February, 1851. I do not now remember what others ran. The Florida was one of the regular mail line of boats between New Orleans and Mobile, and travellers between those ports usually travel by the mail line, that is, the majority of them do.

3. I was clerk of the steamer Florida in February, 1851. Was clerk on the 5th of said month. The said boats do keep a list of the names of passengers in a book kept for that purpose. Usually only the family names are entered, omitting the given name or initials. By reference to the passage register of the steamer Florida, which is a book kept for the registration of passengers and receipts from passage money, I find that, on the fifth day of February, 1851, the name of Collins was entered. Said book was kept by me, and the entries are in my handwriting. The Florida left New Orleans on the 5th of February, 1851, and arrived here on the following day. I do not know the complainant, but the name Collins is on the Florida's passenger register for the trip from New Orleans to Mobile of the 5th February, 1851, entered in my handwriting. The name was given me by a person desiring to take passage in his name, and I so entered it on the book.

4. The name of the boat which left New Orleans for Mobile on the 5th of February, 1851, was the Florida. The names of passengers entered for said trip are Moss and lady, Baty and lady, Mrs. Ingraham, Mrs. Howard, Mrs. Longfield and child, one negro servant, called Ann, Collins, Bancroft, Butterworth, Tail, Ford, Dixey, Smith, do. Fluitt, Howard, Parsons, Carpenter, Turnbull, Baker, Spencer, Cunningham, Buff, Gaston, Hayden, Bonford, Walkington, Randolph, Chase, Lane, Strong, Herndon, Cottrell. One who gave his name as "Collins" was a passenger that trip, but whether he be the complainant or not I cannot say.

5. The majority of travellers went on the mail steamers.

6. I know nothing more which I deem of benefit to either party.

To Cross-interrogatories.

1. I do not know him.

2. I have not said that the complainant was a passenger on said trip; have only said that a man, who gave his name as "Collins," was.

3. On examination of the lists of passengers on the Florida, and for the trips between the dates inquired of, I find that the name of Collins appears once as a gentleman passenger on the list of the trip of the 5th February, 1851; and on the list for the trip of February 14th, 1851, I find that the said name occurs, and as a lady passenger, and three times as gentlemen passengers; both said trips were from New Orleans to Mobile.

4. On the list for the trip of 14th February, 1851, there is the name of Collins for three passages altogether. I do not know the Christian names, nor whether they all bore the name of Collins. I do not know that in reality any of them was so named; only know that said name was given. Passages for different persons are often taken in one name.

5. There was a line of steamers run by Mr. Gilbert, between Mobile and New Orleans, which left at different hours from the mail line. Said line was purchased from Gilbert by the Mail Line Co., and run by them for about two years, but I do not remember the date of the purchase. The names of the boats were the Mobile and the St. Charles, and they did carry passengers.

6. Drury Thompson, one of the defendants in this cause, called my attention to the register, about which I have testified, and to which I have referred for a list of passengers, and requested me to look on the list for the trip of the 5th of February, 1851, to see if the name of Collins was there, and whether or not it was entered in my handwriting. I accompanied him to the office of Chandler, Smith & Herndon, but did not find Mr. Chandler in. At the request of Mr. Chandler, some three or four days since, I went again, and found and examined the register; it was in the office of Messrs. Chandler, Smith & Herndon. This was not the proper place of custody of the register, but I believe it was lent to the defendants' attorneys by one of the owners of the mail line.

T. S. BATES.

The foregoing deposition of Thomas S. Bates was taken, subscribed and sworn to, at Mobile, Ala., on the 24th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

Nos. 8 and 9. *Interrogatories to A. J. Wagner and William E. Starke, of the city of New Orleans, Witnesses on behalf of the Defendants in the said cause:—*

1. What is your age, where did you live in February, 1851, and what office did you then hold? Were you in the custom-house of New Orleans at that time, or at this time, or have you been at any time, and have you access to the books of the custom-house?

2. Will you examine those books, and answer what steam vessels are reported as having arrived in New Orleans from the port of Galveston, in Texas, between the first and the 15th of February, 1851, and state the day of its arrival?

3. Will you examine the same books, and state what steam vessels arrived from any other port in Texas, between the 1st and 15th of February, 1851, and state the day of its arrival?

4. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Defendants' Solicitors.

Filed March 27th, 1857. GEO. E. HOLT, *Clerk.*

Cross-interrogatories by the Complainant to the said Witnesses.

1. If you have stated what steamers arrived from Texas to New Orleans from the 1st to the 15th of February, 1851, please state the day of each arrival of said steamers at New Orleans, and if you know the day of departure from Galveston, and the hour of the day.

2. How long were said steamers on the voyage between the two ports? State, if you know.

3. Has any person applied to you, previous to your examination, upon the subject of it? If yea, who and when?

4. In whose handwriting are the books in the custom-house which show the facts you have testified to, and in whose custody and charge are they now kept?

K. B. SEWALL,
of Counsel for Compl't.

Filed 6 Ap'l, 1857. GEO. E. HOLT, *Clerk.*

No. 8. *Deposition of William E. Starke.*

The said witness, in answer to the direct and cross-interrogatories, says, on oath:—

1. To the first interrogatory. I am forty-two years of age. I

lived in New Orleans in February, 1851. I did not then hold any office from the government. I was not in the custom-house at New Orleans at that time, but was appointed appraiser in the custom-house at New Orleans in 1853, April or May of that year, and subsequent on the first of November, 1854, was appointed surveyor of the port of New Orleans, and continued until the ninth day of March, 1857, during all which time I had access to the books of the custom-house at New Orleans, and I now have access to them, but not officially.

2. To second interrogatory. I have examined the books of the custom-house, and the manifests of all steam vessels reported as having arrived in New Orleans from Galveston between the first and fifteenth of February, 1851, and find that the steamship Louisiana cleared at Galveston for New Orleans on the third of February, 1851, and arrived in New Orleans on the 7th February, 1851, or is reported at the custom-house at that time. The law allows forty-eight hours to make entry at the custom-house, and the entry is made within that time, but not always immediately on arrival. The boarding officer reports the vessels, but they are not always entered immediately on arrival. I find, also, that the steamship Galveston cleared at Galveston for New Orleans on the 7th day of February, 1851, and arrived in New Orleans on the 10th day of February, 1851. This is the time of arrival reported at the custom-house, as stated by me heretofore. The entry is not always made immediately on arrival. If the arrival is after one o'clock, the entry is not usually made till next day, though it may be made upon special application.

3. To third interrogatory. I have examined the books of the custom-house, at New Orleans, and the manifests of all the steamers from any other port in Texas than Galveston, and find that the steamer Maria Burt is reported as having cleared at the custom-house at Sabine Pass, Texas, on the 7th day of February, 1851, and to have arrived at New Orleans on the 10th day of February, 1851, and her cargo as reported on the manifest consisting of 160 beeves.

4. To fourth interrogatory. I do not know anything further that can benefit the parties in this cause, except that I should have stated that the above steamers are all the steam vessels reported as coming from any port of Texas between first and fifteenth of February, 1851.

To cross-interrogatory witness answers:

1. I refer to my answers to the second and third interrogatories for my answer to this cross-interrogatory.

I do not know except from the statements taken from the manifests of the several steamers returned by the officers of said steamers to the custom-house, and from the books of the custom-house. I cannot state the day and hour of departure or arrival; I can only state the facts as they are reported at the custom-house, and heretofore detailed by me.

2. To second cross-interrogatory. I cannot state except by a com-

parison of the date of clearance and arrival, and I refer to my answers to the second and third interrogatories for statements of such clearance and arrival at New Orleans.

3. To third cross-interrogatory. Daniel Chandler, Esq., of Mobile. wrote to me some time during last month, asking for information relative to the arrival of steam vessels in New Orleans, from Galveston, between the 1st and 15th of February, 1851. I referred to the books at the custom-house, and gave the necessary information.

4. To fourth cross-interrogatory. The entries on the books referred to are made by the collector's clerk, and said books are now in the custody of F. H. Hatch, Esq., the collector of the port of New Orleans; and the manifests referred to, are in the handwriting of some of the officers of the several boats, I suppose.

W. E. STARKE.

No. 9. *Deposition of A. J. Wagner.*

The said witness in answer to the direct and cross-interrogatories, says on oath:—

1. To first interrogatory. I am thirty years of age. I lived in New Orleans in February, 1851. I was then employed in one of the clerks' offices of the District Courts of New Orleans. I have been deputy surveyor in the custom-house at New Orleans since the 1st of September, 1854, and am now deputy surveyor, and have access to the books of the custom-house.

2. To second interrogatory. I have examined the books of the custom-house, at New Orleans, and the manifests of all steam vessels coming from Galveston to New Orleans, between the 1st and 15th of February, 1851, and I find that the only steam vessels thus coming are the steamship Louisiana, which is reported as having cleared at Galveston for New Orleans on the third day of February, 1851, and as having made entry in the custom-house, at New Orleans, on the 7th of February, 1851. The steamship Galveston cleared at Galveston on the 7th day of February, 1851, and made entry at the custom-house at New Orleans on the 10th of February, 1851. Vessels are allowed 48 hours after arrival to make their entry in the custom-house, and when they arrive after one or two o'clock in the day, the entry is not usually made during that day, because it is later than custom-house hours. No other steam vessels than those named came to New Orleans from Galveston, from the 1st to the 15th February, 1851, as I find reported on the books of the custom-house.

3. To third interrogatory. I have examined the same books of the custom-house, and the manifests on file in the custom-house, and find that the only steam vessel that arrived from any other port of Texas between the 1st and 15th of February, 1851, is the steamer Maria Burt, containing a cargo of one hundred and sixty cattle or beeves; the Maria Burt cleared at the custom-house at Sabine Pass, on the 7th day of February, 1851, and arrived at New Orleans on the 10th day of February, 1851, as reported at the custom-house.

4. To fourth interrogatory. I do not know any other matter or thing that can aid the parties in the suit.

To the cross-interrogatory witness answers:

1. To first cross-interrogatory. I have stated as nearly as I can, the time of departure of the several steamers from Galveston, and their arrival at New Orleans. Steamers are usually reported by the boarding officer, on arrival, but the memorandum book in which such vessels are entered has been mislaid, and I cannot find it, though I have looked diligently for it; I can only judge by the date of entry made in the custom-house books. I refer to my answers to the second and third interrogatories as part of my answer hereto.

2. To the second cross-interrogatory. I cannot state, except by a calculation made, taking date of clearance and entry in the custom-houses at Galveston and New Orleans, and I refer to my answers to the second and third interrogatories as my answers hereto.

3. To the third cross-interrogatory. No person has made any application to me, previous to this examination, until to-day I was asked to get the books under my control and in the custom-house for Mr. Starke to examine.

4. To the 4th cross-interrogatory. The books in which the entries of the several vessels were made, were in the handwriting of the collector's clerk, and are the regular books of the office accessible to me daily in my official capacity of deputy surveyor, but under the general control of the collector of the port. The manifests examined by me are in the handwriting of the several officers of the vessels, respectively, I suppose. A. J. WAGNER.

The foregoing depositions of William E. Starke and A. J. Wagner were taken, subscribed, and sworn to at the City of New Orleans, before Thomas L. Bayne, Esq., a commissioner appointed to take testimony in said cause (no date stated).

Filed 10th April, 1857. GEO. E. HOLT, *Clerk.*

No. 10. *Deposition of Robert Geddes.*

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss.
CITY OF NEW ORLEANS.

Be it remembered, that on the thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, before me, William H. Hunt, a commissioner duly appointed by the Circuit Court of the United States, in and for the Fifth Circuit and Eastern District of Louisiana, under and by virtue of the acts of Congress, entitled, "An act for the more convenient taking of affidavits and bail in civil cases depending in the Courts of the United States," passed March 1st, 1817, and the act entitled, "An act to establish the judicial Courts of the United States," passed September 24th, 1789, personally appeared Robert Geddes, a person of sound mind and lawful age, witness for the defendants, in a civil suit now depending

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in the Circuit Court of the United States, in and for the Southern District of Alabama, in chancery, wherein Sidney E. Collins is plaintiff, and Drury Thompson, William F. Cleveland and James Campbell are defendants; and the said Robert Geddes being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say:—

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND AND JAMES CAMPBELL.

CIRCUIT COURT OF THE U. S.,
Southern Dist. of Ala.
In Chancery.

Robert Geddes being sworn, deposes, that he is one of the proprietors of the mail line of steamboats running between Mobile and New Orleans, and is agent for the other proprietors, and has been for ten years—having his office at New Orleans; that during that time he has had control and management of said steamboats; that on the registers of said steamboats in trips from New Orleans to Mobile, the day they leave New Orleans affords the date of the trip, and so far marks the time of departure, and not of landing.

From the 1st day of October till the 31st May, during what is called the winter schedule, the steamers of the mail line leave New Orleans about 5 o'clock P. M., and arrive at Mobile next morning about 9 o'clock.

This was the case during the winter of 1851, and in the month of February of that year. On the registry of the boat the usual entry would be "From New Orleans to Mobile" (with date of departure from New Orleans as date of that trip); for instance, a boat leaving New Orleans the first of February, 1851, would have marked on its register, "From New Orleans to Mobile, Feb. 1st, 1851." And such boat would usually arrive in Mobile on the morning of the 2d February, 1851. R. GEDDES.

Examination taken, reduced to writing by me, and by the witness subscribed and sworn to at New Orleans, this thirteenth day A. D. 1857, before me.

WILLIAM H. HUNT, *U. S. Commissioner.*

UNITED STATES OF AMERICA,
Fifth Circuit and Eastern District of Louisiana,
City of New Orleans, ss.

I, William H. Hunt, commissioner duly appointed as aforesaid, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness is a resident of the City of New Orleans, which is more than 100 miles from the City of Mobile, the place of trial of the cause, for and in which said deposition is taken and is necessary. I further certify that no notification was made

out and served on the plaintiff or adverse party, his agent or attorney, to be present at the taking of the deposition and to put interrogatories if he or they should think fit, and that no notification of the time and place of taking the said deposition was made out and served on said plaintiff or adverse party, because neither the said adverse party nor the attorney or agent of said adverse party, was at the time of taking said deposition within (100) one hundred miles of the said city of New Orleans, the place of taking the said deposition. I further certify that on this thirteenth day of April, A. D. 1857, I was attended by Robert Geddes, of New Orleans, at my office in the city of New Orleans, at 10 o'clock A. M. of said day, who was of sound mind and lawful age, and the said witness was by me carefully examined and cautioned and sworn to testify the whole truth, and the deposition hereinbefore appearing was by me reduced to writing in the presence of the witness, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same with my own hand to the Court for which the same was taken. I further certify that I am not of counsel or attorney to any of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal at New Orleans, this thirteenth day of April, A. D. one thousand eight hundred and fifty-seven. WILLIAM H. HUNT,

U. S. Commissioner in and for the Eastern District of Louisiana.

Filed April 14th, 1857. GEO. E. HOLT, *Clerk.*

Objections filed on the trial by the compl't, to the deposition of Robert Geddes, to wit:—

That the said deposition is taken *ex parte* without notice, and no opportunity was afforded the complainant to cross-examine the said witnesses. Objections taken by counsel for the complainant.

Attest, GEO. E. HOLT, *Clerk.*

No. 11. *Interrogatories to be propounded to Henry P. Waggaman, a witness on behalf of the defendants, in the said cause.*

1. What is your age and profession?

2. Were you engaged in the month of February, 1851, upon any of the mail boats plying between New Orleans and the city of Mobile? Upon which of said boats were you employed, and in what capacity?

3. What days did the said boat leave New Orleans, and what day did she arrive at Mobile from the first to the 15th of February, 1851?

4. State on what trips any person named Collins was a passenger on said boat, during that time, and on what trips was there none of that name?

5. What is the date assigned to a trip from New Orleans? Is it

of the day of the departure from New Orleans, or the day of the arrival at Mobile? Is that the uniform course on the mail boats.

6. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER SMITH & HERNDON, *Defts' Solicitors.*

Filed March 27th, 1857. GEO. E. HOLT, *Clerk.*

Cross-interrogatories filed to the said witness by the complainant in the said cause.

1. How long were you ever employed on the boats, or any one of them, of the mail line between New Orleans and Mobile? And when did you leave that employ and why?

2. What boats were running in that line while you were connected with it? Give the name of each boat, and the names of the captains and clerks.

3. Where and how have you been employed since you left the said mail line? Where are you now employed, and by whom?

4. Was it your business to keep a list of the trips, or a list of the passengers of the mail boat you were on? Was such not the sole business of the clerk of the boat? Who was the clerk of the boat you were on? Who was the captain while you were on her?

5. Where is the register of said mail boat? Are you the keeper of it? Was it in your possession? When and where did you last see it?

6. Have you been requested to examine the pages of said register from the 1st to the 15th of February, 1851? If yea, by whom? and when? and where?

7. In whose handwriting is said register? In whose handwriting is the name "Collins" on said register?

8. If you have stated that any person by the name of Collins was a passenger on the said mail steamer with yourself from New Orleans to Mobile, between the 1st and 15th of February, 1851, state on what day of the month and week he left New Orleans, and on what day he arrived in Mobile, and how you know.

9. Do you know Sidney E. Collins, the plaintiff in this suit? If yea, when did you become acquainted with him, and where?

10. How is it, at this distance of time, you can fix the precise day when a certain passenger, by the name of Collins, came on said mail steamer from New Orleans to Mobile, in February, 1851?

11. Has any one conversed with you, or written to you, upon the subject upon which you have been interrogated, by the defendants in this case? If yea, state who, and what has been said or written?

12. Do you know any or all of the defendants in this cause, and which of them?

13. Was there any line of steamers other than the mail line run-

ning between New Orleans and Mobile in February, 1851? If yea, what and how many boats?

K. B. SEWALL,
of Counsel for the Complainant.

Filed 6th April, 1857. GEO. E. HOLT, *Clerk.*

No. 11. *Deposition of Henry Waggaman.*

The said witness, to the direct and cross-interrogatories, answers and says, on oath:—

1. To first interrogatory. I am twenty-seven years old, and am now engaged as a police-officer in New Orleans.

2. To second interrogatory. I was a clerk on the steamer James L. Day, one of the mail line of steamers plying between Mobile and New Orleans, in the month of February, 1851.

3. To third interrogatory. The steamer Jas. L. Day left New Orleans for Mobile February 3d, 1857, and arrived in Mobile on the morning of the 4th of February. On the next trip, which was the second trip in the month of February, and the trip of the 6th of February, she left New Orleans about 5 o'clock P. M. on the 6th day of February, 1851, and arrived on the morning of the 7th of February. Next trip, the trip of the 9th of February, she left New Orleans on the afternoon of the ninth of February, 1851, and arrived on the morning of the 10th. Next trip she left New Orleans on the afternoon of the 12th of February, about 5 o'clock P. M., and arrived in Mobile on the morning of the 13th. Next trip she left New Orleans on the 16th of February, 1851, and arrived on the 17th at Mobile. These are all the trips from New Orleans to Mobile between the first and fifteenth of February, 1851.

4. To the fourth interrogatory. There was a passenger by the name of Collins on the trip of the 6th of February, 1851; that is, the trip on which the steamer left New Orleans on the 6th of February, 1851, and arrived at Mobile on the 7th of February. There was no other passenger by the name of Collins on the steamer James L. Day in any of the trips above described—that is, any of the trips between the 1st and 15th of February, 1851—than the one described as leaving New Orleans on the steamer on the trip of the 6th of February.

5. To the fifth interrogatory. The date assigned to a trip from New Orleans to Mobile is the day of departure from New Orleans, and not the day of arrival at Mobile. This is the uniform course of the mail boats. The registers of the mail boats, in the trips from New Orleans to Mobile, show the day the boats leave New Orleans, and so far mark the time of departure, and not of landing.

6. To the sixth interrogatory. I do not.

Answers of the Witness to the Cross-Interrogatories.

1. To first cross-interrogatory. I was employed on the boats of the mail line for about three years. I left that employment in the latter part of 1852 or early in 1853, because I wanted to come to New Orleans to live.

2. To second cross-interrogatory. The steamers Creole and James L. Day; the Oregon then came out; and these, I think, were the only boats up to 1851. The next steamer was the California; and the next the Florida. All of these boats were not on the line at one time. I think the Creole and James L. Day were running in February, 1851; but of this I am not certain.

3. To third cross-interrogatory. I have been employed on the Lafayette Railroad, the New Orleans and Jackson Railroad, and I am now engaged in the police department in New Orleans.

4. To fourth cross-interrogatory. It was my business to keep a list of the trips of the steamer I was on, and the names of the passengers travelling on said steamer. I was clerk of the James L. Day. Captain Samuel Griffin was captain part of the time, and Capt. W. T. Giberson was captain during the remainder of the time; both of them are now dead.

5. To the fifth cross-interrogatory. The register is now in the office of Messrs. Clarke & Bayne at New Orleans, where I am examined. I brought the book over to New Orleans when the boat was sold, but they were returned to Mobile, and are usually kept there. I am not now the keeper of said register, nor can I say that it is in my possession, except for examination. As stated, to-day I saw it in the office of Messrs. Clarke & Bayne, and have not seen it before for a year or more.

6. To the sixth cross-interrogatory. During the progress of this examination I have examined the register to-day, but not at any time before for a year or two, or since I settled up with the agents and proprietors of the mail line. I examined it to-day, as stated, in the office of Messrs. Clark & Bayne, and upon suggestion of the commissioner. The register is just as I left it.

7. To seventh cross-interrogatory. The register is in my handwriting. The name of Collins on the register, on the trip of 6th February, 1851, referred to in my direct examination, is in my handwriting. It was first written by me in pencil, and subsequently entered on the next column with a pen. I have identified the page on the register by writing my name upon it during this examination.

8. To eighth cross-interrogatory. I cannot state the day of the week on which a Mr. Collins left New Orleans for Mobile, on the steamer James L. Day, with me, except by referring to an almanac for that year, which is not at hand; but a Mr. Collins left New Orleans for Mobile, on the steamer James L. Day, with me, on the trip of 6th of February, 1851, and arrived at Mobile on the morning of the 7th February, 1851, as I know by reference to the register of the boat, which was kept by me.

9. To the ninth cross-interrogatory. I cannot say certainly that I know Sidney E. Collins, the plaintiff in this suit. I saw a Mr. Collins on the 6th of February, 1851, on the James L. Day, or some person giving his name as Collins. But I cannot now state that his name was Sidney E., or that he is plaintiff in this suit.

10. To the tenth cross-interrogatory. By knowing that I was then engaged as clerk on the steamer James L. Day in February, 1851, running between New Orleans and Mobile, by reference to the register of that steamer, kept by me, and which I now recognize to be in my handwriting, and in the same condition in which I left it.

11. To the eleventh cross-interrogatory. No one has conversed with me, or written to me on the subject. I never heard of the matters referred to in these interrogatories until the Commissioner called me before him for examination, then the several interrogatories were propounded to me. And my acquaintance with the subject is limited to these interrogatories.

12. To the twelfth cross-interrogatory. I know all the defendants in this suit.

13. To the thirteenth cross-interrogatory. I do not think there was any other line of steamers than the mail line running between New Orleans and Mobile in February, 1851.

H. P. WAGGAMAN.

The foregoing deposition of Henry P. Waggaman was taken, subscribed, and sworn to, at the city of New Orleans, on the eleventh day of April, eighteen hundred and fifty-seven, before Thomas L. Bayne, Esq., a commissioner appointed to take testimony in the said cause.

Filed April 13th, 1857. GEO. E. HOLT, *Clerk.*

Nos. 12 and 13. *Deposition of Conrad Tschudy and John N. Reed, of Texas.*

In a certain cause pending in the Circuit Court of the United States of America, in Chancery, for the Southern District of Alabama, wherein Sidney E. Collins is plaintiff, and Drury Thompson, William F. Cleveland, and James Campbell are defendants, I, John Henry Brown, Mayor of the city of Galveston, in the county of Galveston, and State of Texas, at the instance of the defendants in the above entitled suit, have caused Conrad Tchudy and John N. Reed, who reside in the said city of Galveston, more than one hundred miles from the city of Mobile, to come before me at my office in the said city of Galveston, and the said Conrad Tchudy and John N. Reed, having been by me examined, cautioned, and sworn, to testify the whole truth, did depose and say, and doth depose and say, the said Conrad Tchudy, as follows: I have resided in the city of Galveston since 1845, and I am the partner in business of Dr. Jacob C. Kuhn, in mercantile business. I know Sidney E. Collins, the plaintiff in the above entitled suit, personally very well. I do not recollect to have seen him in the city of Galveston, or elsewhere, in the month of February, 1851, and so I told Mr. Collins, about a month or six weeks since, when he spoke to me about the matter. I have never known, in the city of Galveston, or elsewhere, a person named John P. Carr. CONRAD TSCHUDY.

And the said John N. Reed, as follows, to wit, I have been Marshal of the city of Galveston since March, 1854. Previous to that year I was the Sheriff of Galveston County. The nature of my occupation as Marshal brings me in daily and constant intercourse with the citizens and residents of the city of Galveston. And I have never known, in this city, or county, or elsewhere, a person named John P. Carr. No such person resides here.

J. N. REED.

And I, the said John Henry Brown, do hereby certify that I am not of counsel or attorney to either of the said parties, or interested in the event of the said cause. I further testify that the said Sidney E. Collins has no agent or attorney known to me, within one hundred miles of the said city of Galveston, the place of taking the said deposition, nor is the said Sidney E. Collins within one hundred miles of the said place, and no notice of the taking of this testimony has for that reason been served on the said Sidney E. Collins, and that the said testimony was reduced to writing by me, and by the said witness subscribed in my presence.

JOHN HENRY BROWN, *Mayor City of Galveston.*

Attest with the seal of said city of Galveston.

[SEAL.] CHS. E. THOMPSON, *Sec'y.*

Filed 13th April, 1857. GEO. E. HOLT, *Clerk.*

Memorandum made on the trial, at the instance of defendants' solicitors.

The complainant had previously filed interrogatories in the office of the Clerk, and taken out a commission thereon, about the 16th of March, 1857, to examine the witnesses Tschudy, and one John P. Carr, which was not returned into court at the trial of the said cause. Said commission was directed to commissioners at Galveston, Texas. Attest: GEO. E. HOLT, *Clerk.*

Objection taken by the complainant to the depositions of C. Tchudy and J. N. Read, on the trial, to wit, that said depositions were taken *ex parte*, and without notice, and no opportunity was afforded the complainant to cross-examine the said witnesses. Objection noted by complainant's solicitor.

Attest: GEO. E. HOLT, *Clerk.*

No. 14. *Interrogatories to be exhibited to Alexander McKinstry, a witness on the part of the defendants in the said cause.*

1. Do you know the parties to this suit?

2. Where did you live in February, 1851, and do you or not recollect of seeing the plaintiff in Mobile, in the winter or spring of 1851?

3. Please state, to the best of your recollection, when the plaintiff arrived in Mobile in 1851, and state if he brought his family with him, or did he come alone.

4. State any fact or circumstance that will go to show when he arrived in that spring or winter, and that he did or did not bring his family with him.

5. What was Drury Thompson's occupation from 1844 to 1851? During that time was the plaintiff frequently in Mobile? Did you see him, while here, often? Was he by himself, or under restraint or control, as far as you could judge? Was he or not frequently in other company besides that of Thompson? Did Mr. Thompson's business require his attention? And was he or not attentive to the duties of the office?

6. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If so, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON.
Defendants' Solicitors.

Filed 14th March, 1857. GEO. E. HOLT, *Clerk.*

Objections Filed by the Complainant, &c., and Cross-interrogatories to the said Witness.

The complainant objects to so much of the 5th direct-interrogatories to this witness as are in these words, to wit:—

"During that time was the plaintiff frequently in Mobile? Did you see him while here often? Was he by himself, or under restraint or control, so far as you could judge? Was he not frequently in other company besides that of Thompson?" On the ground that it is leading, and on the further ground that as to restraint or control it asks the opinion of the witness. And he objects to the residue of the said question, to wit: "Did Mr. Thompson's business require his attention, and was he attentive to the duties of his office," as leading and as irrelevant. And without waiving these objections, propounds the following cross-interrogatories:—

1. If, in answer to any of the direct-interrogatories, you have stated that Mr. Collins came to Mobile frequently or often between 1844 and 1851, please state how many times he came, and how long he staid each time; be particular as to dates, and state them only so far as you can of your own knowledge. State them accurately. If you cannt be positive as to dates, let that fact appear in your answer.

2. Did not Mr. Collins make his appearance in Mobile after his first visit, always about the time it was supposed the case would come up for trial, and did he not return to Texas as soon as it was known what disposition was made of it?

3. Did not Mr. Collins first come to Mobile in January or February, 1845?

4. Did not Mr. Collins, from the time of his first visit in 1845, up

to 1851, when in Mobile, always stop with Mr. Thompson, the defendant?

5. Was it not at Mr. Thompson's request or invitation that Mr. Collins, on such visits, put up at his house?

6. If you have said anything upon the subject of Mr. Thompson's attention to the duties of his office as Clerk of the County Court, please state whether during the last years of said Clerkship he was not inattentive personally to such duties, devolving them almost enterely on his subordinates; was not this to some extent a matter of complaint with those having business in his office?

7. Are you in any, and what manner, related to the defendant, Thompson? Have you any interest in the land, or any part of it, or in any of the subject matter of this suit? If yea, set forth the same.

K. B. SEAWELL,
of Counsel for Compl't.

Filed 24th March, 1857. GEO. E. HOLT, *Clerk.*

No. 14. *Deposition of Alexander McKinstry.*

The said witness, in answer to the direct and cross-interrogatories, says, on oath:—

1. I know the parties.

2. In February, 1851, I lived in the city of Mobile. I saw the plaintiff at my house, but I cannot say whether it was in the winter or spring of 1851, or before.

3. I cannot say at what time he arrived here in 1851, but at the time he was here in my house, he came alone.

4. I owned a house and lot on Government Street, in the city of Mobile, from the fall (say November), 1849, until May, 1851. I kept house there, and in May, 1851, I removed out of the city to a place in the country, where I resided for some years winter and summer. I had never kept house before the fall of 1849. During the time that I was keeping house there, the plaintiff spent one evening at my house. Not long after it was known here that he had succeeded in his suit against the heirs of Kennedy. At this time he was staying with the defendant, D. Thompson. His family were not here.

5. He was Clerk of the County Court of Mobile County from 1844 till August, 1849; after that till 1851. I cannot say now what he was doing. I don't recollect whether the plaintiff was here frequently or not, nor do I know whether he was by himself or under restraint or control. There was nothing in their intercourse that appeared to me unusual, but what was the natural result of the aid that rumor said that Thompson was rendering to the plaintiff, nor can I recollect now as to the company he frequented. While the defendant, Thompson, was the Clerk of the County Court, his business required his constant attention. I think that he was attentive to the duties of his office.

6. I do not know what would be of advantage to the parties, and therefore cannot say whether I know anything or not.

To the Cross-interrogatories he answers.

1. I have been as particular in reference to dates as my memory admits, and have only stated them on my own knowledge.
2. I do not recollect.
3. I do not recollect the month, but the first time I ever saw the plaintiff was in 1844 or 1845.
4. I think he did. He generally did.
5. I do not know.
6. My memory does not suggest any change of my answer to the fifth direct-interrogatory as to Thompson's attention to his duties. At that time it is not likely that I should have heard complaints, if they had been made, as we were then on very friendly and intimate terms.
7. I am a nephew of the defendant Thompson. It is but just to add that for three or four years last past, our intercourse has not been friendly. I have no interest in the land, nor any part of it, nor in any of the subject matters of the suit, and never did have, nor know anything about it, save from rumor.

ALEX. McKINSTRY.

The foregoing deposition of the witness, Hon. Alexander McKinstry, was taken, subscribed, and sworn to, at the city of Mobile, on the 27th day of March, 1857, before Richard B. Owen, Esq., a Commissioner appointed to take testimony in the cause aforesaid.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

No. 15. *Interrogatories to be exhibited to H. M. Lewis, a witness on behalf of the Defendants in the above entitled cause.*

1. Do you know the parties?
2. Did you draw a deed from Joshua Kennedy to James Campbell and William F. Cleveland, in the year for the lot at the northeast corner of St. Louis and Water Streets, measuring about 100 feet square. Had you any instructions in reference to certain alley-ways, around that lot, from Joshua Kennedy, the grantor? If so, what were they? State fully.
3. Do you know when these alley-ways were opened, and how long have they been used? State to the best of your recollection and belief.
4. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Sol'rs for Defendants.

Filed 8th January, 1857. GEO. E. HOLT, *Clerk.*

Objections, etc., and cross-interrogatories filed by the complainant to the said witness.

Complainant objects to the second and third direct interrogatories to H. M. Lewis as calling for illegal testimony to prove a grant of land by parol, and in a collateral proceeding, and as irrelevant.

Cross-interrogatories to H. M. Lewis.

1. Except the brick building at the northeast corner of St. Louis and Water Streets, were there any permanent improvements on that square until those made by the Battles in 1851–2?
2. Was not the building on the Campbell and Cleveland lot unoccupied for several years, or nearly unoccupied, except for storage, for several years before it was purchased by Waring and others?
3. What is your business or occupation, and where is your office?
4. Have you ever occupied any of the property north of St. Louis Street, and east of Water Street.

K. B. SEWALL,
of Counsel for Compl'ts.

Filed 23d January, 1857. GEO. E. HOLT, *Clerk.*

No. 15. *Deposition of H. M. Lewis.*

The said witness, in answer to the said direct and cross-interrogatories, answers and says on oath:—

1. I know the parties.
2. I did draw a deed for the lot inquired of in this interrogatory from Joshua Kennedy to James Campbell and Wm. F. Cleveland. Joshua Kennedy, the grantor, informed me that his bargain with Campbell and Cleveland was that there was to be an alley-way running through the block each way from north to south, and from east to west, equally dividing the large block into four smaller ones. The reason he gave me why the alley-ways were not specified in the deed was, that he intended to put on record a plan or map of the block, showing the alley-ways through the block, thereby making them public alley-ways, which reason was satisfactory to Campbell and Cleveland at the time.
3. Campbell and Cleveland built on the above mentioned lot immediately after their purchase, made the side-walks on the north and east side of the buildings, and I believe the alley-ways around the buildings have been open from that time to this. The lot they bought and built upon was about a quarter of the square, and the buildings they put up had side-walks put all round it.
4. I remember distinctly that it was understood between the parties to the deed drawn by me, that the said alley-ways were to be left open and public.

Answers to the Cross-interrogatories.

1. I believe there were not.
2. I believe it was not fully occupied for several years previous to the purchase by Waring and others. I believe some portion of it

above was occupied for offices, and a portion of the lower part occupied for storage.

3. My present business is that of a dealer in exchange, and my office is on Water Street.

4. I have never occupied any of said property.

(Signed,) H. LEWIS.

The foregoing deposition of the witness H. M. Lewis was taken, subscribed, and sworn to, at the city of Mobile, on the 24th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

(15.) *Interrogatories to be exhibited to Moses Waring, a witness for the defendants, in the above entitled cause.*

1. Do you know the parties?

2. Were you concerned in the purchase of a lot at the northeast corner of St. Louis and Water Streets in Mobile, at the sale of the lots of the Branch Bank of the State of Alabama, at Mobile, in 1849? if so, who were concerned with you, and under what circumstances was the purchase made, and at what price?

3. Who had the charge and management of that property from the time of the purchase till the summer of 1851?

4. Was there any question in regard to the alley-ways about that lot? State when it arose, and when and how it was settled; state at what time Judge Campbell, your co-tenant, interposed in regard to that question, and under what circumstances, and state what you know respecting these alley-ways.

5. Did you occasion any impediment or obstruction to the settlement between the parties representing the Collins claim, and the executors and heirs of Kennedy, in June, 1851, or were you connected with that settlement, and in what manner?

6. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Solicitors for defendants.

Filed 8th January, 1857. GEO. E. HOLT, *Clerk.*

Cross-interrogatories by the complainant to the said witness, and objections, etc.

The complainant objects to the second, 3d, 4th, and 5th direct interrogatories to Moses Waring as irrelevant.

Cross-interrogatories.

1. Did not John A. Campbell, Esq., act as your attorney-at-law

or counsel in 1849? Has he not since acted as such in all matters that you considered required legal advice?

2. Did you not consult with him before you became the purchaser of the property referred to in the second direct interrogatory as to the title to the same, and was it not upon his opinion as to the title that you became a party to such purchase?

3. Were not alley-ways around that lot and building of great value to it? and as the owner of that lot, did you not exert yourself to have them secured?

4. If you interposed any obstruction to a settlement of the Collins claim, was it not for the purpose of securing to yourself and co-tenants in that purchase alley-ways on the east and north of said property?

5. Did not Cleveland, or some of the defendants in this suit, tell you that he or they could furnish evidence that would secure you full alley-ways, and was not this an inducement to your purchase?

7. How much of said building had been occupied for some years before your purchase? Was not the rest of that square wholly without any permanent improvements?

8. After your purchase, did you not repair said building, and then offer it at low rent to induce a good class of tenants to occupy it, and did you not have to keep the rent low for a year or two, to keep such tenants there?

9. When did you buy out the interest of J. A. Campbell in said property, and what price was paid him?

10. Prior to 1842, did not William D. Primrose speak to you of the Collins claim, and try to induce you to embark in it as a speculation?

11. Did he not tell you that he had the opinion of Campbell and Chandler, and their legal opinions as to its validity?

12. Have you not, since this bill was filed, been requested to use your influence to have the bill dismissed? and if so, by whom?

13. Have you had any letters from the defendants in this suit, or their solicitors, or any of them, or from the Honorable John A. Campbell, on this subject; or have you had any interviews, or conversations with them, or any of them, on the subject of this suit, or the defence to be made to it, or the testimony you were to give?

K. B. SEWALL, *of Counsel for Compl't.*

Filed 23d January, 1857. GEO. E. HOLT, *Clerk.*

No. 15. *Deposition of Moses Waring.*

The said witness, to the direct and cross-interrogatories, answers and says, on oath:—

1. I know the parties.

2. I was concerned in the purchase of the lot herein described, and at the time and sale herein inquired of. Judge John A. Campbell was concerned with me in the said purchase, and the price we gave was, I think, ten thousand six hundred dollars.

3. I had the charge and management of said property from the time of the purchase to the summer of 1851.

4. There was no question in regard to the alley-ways about the lot, on the part of any one except A. R. Meslier, one of the representatives of Joshua Kennedy, deceased. The difficulty he made about them arose shortly after we made the purchase. When said difficulty arose, I went to Judge Campbell to consult him as to what should be done in relation to it, and he advised me to let the matter lie over until the suit of S. E. Collins *vs.* The Heirs of Kennedy, which was then pending, should be decided—saying, that in all probability the property would then change hands, and the matter could then be fully settled. The question was accordingly let remain over until that period, and was then settled by Sidney E. Collins, William F. Cleveland, and James Campbell, conveying said alley-ways to me. After the suit was decided, Judge Campbell spoke to the parties just above named, in relation to this matter, and the result of said consultation was the conveyance by them to me. It is my impression that this conveyance was made to me after I had bargained with Judge Campbell for his interest in the property. Collins, James Campbell, and Cleveland refused to convey to me the alley-ways to the full extent that Joshua Kennedy had laid them out, which was for one of them forty-five feet wide, and for the other twenty feet; they reduced the 45 feet alley-way to thirty feet. Mr. Joshua Kennedy, in his lifetime, frequently told me that he had laid out these alley-ways, and that the property there, which he had sold to James Campbell and Cleveland, was sold subject to these alley-ways, with the understanding that they were to remain open and public. Buildings were put up fronting upon said alley-ways, and side-walks made. Mr. Kennedy himself built a house on the line of the alley-way with doors and windows opening on to the alley-ways, which has since been burned.

5. I interposed no impediment or obstruction to the settlement herein inquired, nor was I further connected with it, than to make a proposition in behalf of Wm. F. Cleveland to Mr. Hallett, the executor of Kennedy, which proposition was rejected.

6. I have stated, I believe, all I know of the matters in issue in this cause.

Answers by the said Witness to the Cross-Interrogatories.

1. My permanent attorney has been for many years George N. Stewart, Esq., but I have frequently employed Judge Campbell in my cases; I probably did employ him in 1849.

2. I did not consult him in relation to the title to said property, nor was it upon his opinion as to the title that I became a purchaser.

3. Alley-ways around said lot are, of course, of great value to it, and I bought the property knowing that the alley-ways belonged to

it. My exertions to get them secured I have detailed in my direct examination.

4. I imposed no obstructions to said settlement.

5. William F. Cleveland did tell me that he knew the alley-ways belonged to the property, but I knew this as well as he did, and was not at all influenced by him in my purchase.

7. The whole of said building had been occupied for some years before my purchase, and the rest of the square was without permanent improvements.

8. I repaired it, and rented it out to different tenants, and now receive the same rent I started with. Have never advanced the rent; it is a fair rent.

9. I bought the interest of Judge John A. Campbell in the summer of 1851, at an advance of about $2000 on the net cost of the purchase and repairs. I bought two pieces from Judge Campbell, and gave him about $2000 profit on the two pieces.

10. Mr. Primrose did call on me to get me to embark in it, which I refused to do. I do not remember the time of his application to me.

11. I do not remember whether he told me so or not; I declined to have anything to do with the business.

12. William D. Primrose, Esq., has requested me since the bill was filed to see Mr. Sewall, and try and get the bill dismissed, and all litigation about the property stopped. He is the only one that has spoken to me in this connection.

13. To the whole of this interrogatory I answer, that I have not, further than that I have been called on to make an affidavit in relation to the alley-ways, which I have done.

M. WARING.

The foregoing deposition of Moses Waring was taken, subscribed, and sworn to at the city of Mobile on the 17th day of February, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the cause aforesaid.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

No. 16. *Interrogatories to be propounded to William R. Hallet, a Witness on behalf of the Defendants in the said cause.*

1. Were you the executor of the last will and testament of Joshua Kennedy, deceased, and guardian for the minor children of said Kennedy?

2. Please state the net amount of the rents and profits of the property surrendered to the plaintiff in this suit, during the period of your administration, or such an approximation as you are enabled to make.

3. For what amount of rents and profits have you accounted after deducting expenses and disbursements?

4. What portion of all the rents and profits received by you arose

from the improvements made by Joshua Kennedy, or by you, and was owing to them?

5. Did you, in the spring of 1851, furnish a statement to J. A. Campbell in a letter to him at that time, when the subject of a settlement was under consideration? What was the balance rendered? Was that the exact balance?

6. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination? If yea, state the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Def'ts' Solicitors.

Filed 24th March, 1857. GEO. E. HOLT, *Clerk.*

Objections and Cross-Interrogatories filed by the Complainant to the foregoing.

The complainant objects to the first, second, third, fourth, and fifth interrogatories to William R. Hallet, on behalf of the defendants, as irrelevant; and further, to said fifth interrogatory as calling for illegal testimony; and, without waiving these objections, files the following cross-interrogatories to said witness:—

1. Were any efforts made between February and June, 1851, for a settlement of the open matters in the suit then pending between Sidney E. Collins and the heirs and representatives of Joshua Kennedy, deceased? If yea, set forth what was proposed on either side, and what if anything was accomplished?

2. Did not Mr. Campbell wholly fail to come to any agreement with you on the subject? And why was this? Were you not ready and willing to agree on a settlement, and was the delay owing to you or to him?

3. After Mr. Collins arrived from Texas in December, 1851, did he not in person submit a proposition for a final settlement of the controversy? And did you not at once accept it?

4. Was not the proposition of Mr. Collins this in substance, to wit, St. Anthony Street to be the dividing line, and a lot north of St. Anthony Street and the Wm. F. Cleveland bond, to be in lieu of all claims for sales, rents, &c.?

5. At the time Mr. Collins made the proposition for a settlement and you agreed to it, did you not express your surprise that the matter had not been settled before, and did you not say that you had agreed to every proposition that had been made, or something to that effect?

6. Describe, as near as you can, the bond or covenant of Cleveland that was embraced in Mr. Collins' proposition, or if you can, annex to your answer a copy of it.

7. How much was due on said bond or covenant of Cleveland in June, 1851, or what was your estimate of the amount?

8. Was not Wm. F. Cleveland considered insolvent in 1851, and

was it not on that account that you attached but little value to the said covenant?

9. So far as you know, had Cleveland ever paid anything on account of that covenant, either to Joshua Kennedy in his lifetime, or to his executors after his death? If yea, state when, and how much.

10. To whom did you deliver that covenant; was it not to John A. Campbell?

11. If you made any statement to John A. Campbell, such as is referred to in the 5th direct interrogatory, what was the object in making to him such statement?

12. Did you ever furnish any statement of the rents, &c., of the property to Mr. Collins?

13. Were you as an executor of Joshua Kennedy, deceased, ever applied to for a conveyance of alleys around the Campbell and Cleveland lot, at the northeast corner of St. Louis and Water Streets? If yea; when and by whom?

14. In 1835, when that lot was sold by Kennedy to Campbell and Cleveland, was not real estate high, and was not $10,000 then a low price for a lot one hundred feet square at that place?

15. Was not Joshua Kennedy in his land transactions an accurate man, and if in selling a lot of land, he had by mistake omitted to convey all that he had agreed to, would he not on request have corrected it, and made the proper conveyance?

16. Are not Campbell and Cleveland men who have a sharp eye to their own interest, and would they be content to pay ten thousand dollars for land, and receive a deed for less than they bargained for, or if they received such a deed, would they not be prompt to have it corrected?

17. Have any person or persons, parties to this suit, or any of them written you, or conversed with you on the subject of this your examination since July, 1855? If yea; please to state who, when, and what was said or written.

K. B. SEWALL,
of Counsel for Complainant.

Filed 4th April, 1857. GEO. E. HOLT, *Clerk.*

No. 16. *Deposition of Wm. R. Hallett.*

The said witness to the direct and cross-interrogatories aforesaid, answers and says on oath:—

1. I was.

2. I cannot state what the amount was. My accounts as executor are settled and filed in the Probate Court. The state of my health will not enable me to go into an examination of them. I am unable to give any attention to my own affairs. I suppose $15,000 would cover the sum collected. I paid over to one of the children, the youngest, about $2,700, which was one-fifth of the amount; I speak from memory.

3. My accounts on file in the Probate Court will show the amount herein inquired of.

4. Every dollar received for rent was owing to improvements made by Joshua Kennedy. I came here in 1817. The land was covered with water to the foot of the bank, now east side of Royal Street. Joshua Kennedy filled it up at great cost, and I question if the property to day put up at public auction would reimburse principal and interest of cost of filling up and other improvements. After the death of Kennedy, I had the ground east of Commerce Street filled up. The rents derived were principally from the wharves, and they netted little more than the cost of repairs and taxes. The part filled by Kennedy in his lifetime I had to fill higher by order of the city authorities, who declared it again and again a nuisance, and I was compelled to fence, make side-walks, &c.

5. I do not remember to have furnished the statement herein inquired of, though I may have done so.

6. I am not aware now that I know anything more which would be a benefit or advantage to any of the parties, or material to the issue involved in this cause.

To the cross-interrogatories he answers:—

1. I made propositions to John A. Campbell, whether verbal or written I do not remember, which resulted in my giving Collins a conveyance of the property under the order of the Court.

2. I have answered this in my answer to the first cross-interrogatory.

3. I have no knowledge of when Collins went to Texas, nor when he returned. Did not know him.

4. I am under the impression that the proposition mentioned in the cross-interrogatory was the one made by John A. Campbell.

5. I had nothing to do with Collins. Collins called on me some time in the spring and introduced himself, and complained that I would not bring the business to a close. I replied that I was anxious to have it closed, and had accepted the propositions. There was some difficulty about the lines; I don't recollect particularly; my health was bad; I couldn't walk; had no use of my right hand, and employed persons to assist me to bring the matter to a close. I understood that Cleveland had complained of the delay in the settlement from February to May. I was most of the time confined to my house; I am not much better off at this time, and am hardly able to attend to business.

6. The bond of Cleveland was given to John A. Campbell. I don't recollect particulars.

7. I don't recollect anything about it. I considered Cleveland insolvent, and treated the bond as of no value.

8. I have answered this in my preceding answer.

9. Cleveland did not make any payments to me. He made some payments to Kennedy, and they were endorsed on the bond; I may be in error, I speak from memory.

10. I have answered this in my answer to the sixth cross-interrogatory.

11. I wrote Mr. Campbell in February, or sent word to him to call and see me, I don't recollect which. I was sick and unable to walk, confined to my house. I wanted the business settled, expected to go to Arkansas Springs, and to be absent many months; don't recollect contents of the letter, if I wrote one.

12. I have no recollection of ever having rendered any statement to Collins, nor do I recollect of ever having had anything to do with him. All that I did was with Campbell.

13. I don't recollect anything about being so applied to. If the alleys were not sold by Kennedy to Campbell and Cleveland, they were the property of the heirs of Kennedy. He conveyed to his children all the ground east of Water Street in his lifetime, between St. Anthony and St. Louis Streets, but I am inclined to the belief that Kennedy intended those alleys to be public highways, and they were so used in his lifetime. He intended to cut up the squares east and west of Royal Street, so as to have alleys.

14. Real estate, I think, was higher then than at this time. Campbell and Cleveland thought they had got a good bargain; it was so considered by the public.

15. My private opinions of this matter have nothing to do with this matter.

16. I do not consider that I can be called on to give an opinion of Campbell and Cleveland's shrewdness or capacity for transaction of business.

17. No person has written to me, nor has any person spoken to me. After I had replied to the interrogatories and cross-interrogatories, Judge Campbell called to see me. I had not seen him since his arrival. He saw the commission lying on my table, and made some remarks about it of no importance. I had finished writing my answers.

W. R. HALLETT.

The foregoing deposition of William R. Hallett was taken, subscribed, and sworn to, at the city of Mobile, on the 8th day of April, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the cause aforesaid.

Filed 17th April, 1857. GEO. E. HOLT, *Clerk.*

No. 17. *Interrogatories to be propounded to William Kitchen, a witness for the Defendants in the said cause.*

1. Were you acquainted with the late Joshua Kennedy?

2. Were you at any time his general and confidential agent, and had you charge of the Alexander Baudain tract of land, in the city of Mobile? When was this?

3. Do you know anything of certain alley-ways in the square between St. Anthony and St. Louis, Water and Commerce Streets, and which bound the buildings erected by Campbell and Cleveland? Did Joshua Kennedy establish the alley-ways, and when?

4. State anything else you may know that will benefit either parties to this suit. CHANDLER, SMITH, & HERNDON.
Solicitors for Defendants.

Filed 1st April, 1857. GEO. E. HOLT, *Clerk.*

No. 17. *Deposition of William Kitchen.*

The said witness, in answer to the said interrogatories, says on oath, I was acquainted with the late Joshua Kennedy.

2. I did business for Joshua Kennedy as his general and confidential agent for a number of years. I cannot say that I had charge of the Alexander Baudain tract of land more than of the other business of Mr. Kennedy; but I was employed to superintend the improvements made upon that tract of land. This was from about 1828, and from then to the time of Mr. Kennedy's death.

3. I do not know of the establishment of the alley-ways, herein inquired of, by Mr. Kennedy, but I do know that improvements were put up by Mr. Kennedy on the west side of Water Street, between St. Louis and St. Anthony Streets, and also on the east side of Water Street by Campbell and Cleveland, in such a way as to induce the belief that the establishment of these alley-ways was intended. The said improvements consisted of brick stores; the one erected by Mr. Kennedy had openings (doors and windows) on its south side, on to what is now the alley-way; and the buildings erected by Messrs. Campbell and Cleveland had doors and windows on its north side on to said present alley-way. I think it possible that I heard the subject of the establishment of these alley-ways spoken of by all the parties concerned, and by Mr. Kennedy himself, though about this I do not now remember. I don't recollect the exact time that Mr. Kennedy erected the building above spoken of, but think it was as early as 1835.

4. I believe that I have stated all that I know of the matters involved in the issue of this suit, which would benefit either party.
WM. KITCHEN.

The foregoing deposition of William Kitchen was taken, subscribed, and sworn to, on the 14th day of April, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the cause aforesaid, and was taken at the city of Mobile.

Filed 15th April, 1857. GEO. E. HOLT, *Clerk.*

No. 18. *Interrogatories to be propounded to George N. Stewart, a witness on behalf of the defendants in the said cause.*

1. Were you the confidential legal adviser of Joshua Kennedy, deceased, during his life, and at the time of his death?

2. Do you know anything of a contract between him and Cleveland and Campbell to open two alley-ways through the square on which they had a lot at the northeast corner of St. Louis and Water Street, or of the fact of the dedication of such alley-ways? State

all you may know, and all you may have heard from Joshua Kennedy on the subject.

3. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH, & HERNDON,
Solicitors for Defendants.

Filed November 54th, 1856. GEO. E. HOLT, *Clerk.*

Cross-interrogatories to the said Witness by the Complainant in the said cause.

1. If you speak of any contract between Joshua Kennedy, and Campbell and Cleveland about alley-ways referred to, state whether it was in writing, and when it was made? Did you ever see any such contracts? State only what you know.

2. When did you first move to Mobile? When did you first become the attorney of Joshua Kennedy?

3. Did you draw the deed from Joshua Kennedy to Campbell & Cleveland for the lot referred to?

4. If you have spoken of a dedication of the alley-ways referred to, state what you mean by a dedication? Whether it is to individuals or to the public. And if you suppose there was any dedication of these alley-ways, state the facts, if you know of any, on which it rests, and all the facts, and nothing else.

K. B. SEWALL, *of Counsel for Compl't.*

Filed 8th December, 1856. GEO. E. HOLT, *Clerk.*

No. 18. *Deposition of George N. Stewart.*

The said witness, in answer to the said direct and cross-interrogatories, deposes and says, on oath:—

1. I was.

2. I know that a lot was sold and conveyed by Joshua Kennedy, at the northeast corner of St. Louis and Water Streets. I was so informed by Joshua Kennedy in his lifetime. I believe the conveyance was to Campbell & Cleveland. The lot, I think, was one hundred feet square. I think the lot was conveyed before I was the counsel of Mr. Kennedy, and therefore I cannot state the particulars as to the alley-ways. I know there is an alley-way on the east and north sides of said lot, but I cannot state how it originated. I have heard it frequently spoken of, but I cannot now undertake to relate statements as to it, nor by whom they were made. My recollection of the alley-way runs to a long period back. I never heard any question as to it except recently. Formerly I do not know of any contest in relation to it, and I do not recollect to have heard of any in the lifetime of Joshua Kennedy, nor can I exactly recollect at this

time, with any precision, how far back my knowledge or information respecting it extended.

3. Just before the death of Mr. Kennedy he caused Mr. Delage to make surveys of the lands in that neighborhood, and had plats made of the same, and laid out some streets preparatory to making his will, and making some disposal of his lands in that vicinity, in contemplation of his decease. He caused streets to be laid off on these plats; one, I think, called Magnolia Street. The lot of Campbell & Cleveland was laid off on some of these plats, but Mr. Delage is now dead, and I do not know where those plats and rough drafts are to be found. I do not recollect of hearing of any contest at that time between said parties as to alley-ways, nor can I state anything particularly as to their occurring at that time.

To the cross-interrogatories the said witness answers:—

1. I cannot state anything as to any contract in writing in respect to said alley-ways. I was not present when the land was sold, and knew nothing of it at the time when the purchase was made.

2. I first came to Mobile in 1817; first came here to reside in 1835; and first became the attorney of Joshua Kennedy in 1835.

3. I think I did not; it was drawn before I came to Mobile. This is my present recollection.

4. I have observed the alleys above spoken of, but I cannot recollect when I first observed them, and I cannot give any further account of them than I have given. It is very possible they may have been spoken of in the lifetime of Joshua Kennedy, but whether they were or not, it is impossible for me now to recollect.

GEORGE N. STEWART.

The foregoing deposition of the witness, George N. Stewart, Esq., was taken, subscribed and sworn to, at the city of Mobile, on the ninth day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

Nos. 19 and 20. *Interrogatories to be propounded to Jacob Magee, Charles W. Dorrance, Robert W. Smith and William Jones, Jr., Witnesses on behalf of the Complainant in the above stated cause, but who, on the trial, declined reading the Depositions of said Witnesses, and the same were introduced and read by the Defendants in said cause, as a part of their testimony, to wit:—*

Interrogatories Direct by Complainant.

1. Do you know the parties to this suit? If yea, how long have you known each of them?

2. Have you, since 1851, received a conveyance from Sidney E. Collins absolute, or by way of mortgage, for a lot of land above St. Louis Street, in the city of Mobile, and have you such conveyance in your possession? If yea, please annex to your answers a correct copy of the same, and state with whom you bargained for said lot,

and what was said as to the title to the same by any of the above named defendants.

3. By whom was said conveyance prepared or drawn, and in whose handwriting is it? What was the value of said lot?

4. Did you give any directions as to the drawing of said conveyance? If yea, to whom and what were they? State all that transpired in reference to the preparation and execution of said conveyance.

5. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

K. B. SEWALL, *of Counsel for Compl't.*

Filed 23d October, 1856. GEO. E. HOLT, *Clerk.*

Cross-interrogatories by the Defendants to said Witnesses.

1. With whom did you negotiate in any transaction you may have had in reference to the matters inquired about in the interrogatories in chief? Were not Collins, Wm. F. Cleveland, James Campbell, Drury Thompson, or some these persons negotiators with you in reference to these matters?

2. Did the parties offering to negotiate with you act in harmony, and as having a joint interest in the matter? Did Collins represent to you who were interested? If so, who?

3. Did you give or take any mortgage? Did you give or take any notes? If so, to whom were such as you made payable, and to whom were they delivered? By whom were such as you, or either of you took, made?

4. Please append a copy of every paper that you, or either of you, gave or took in any such transaction, and state who drew them.

5. Were you referred to any one as to the state of the titles to the property you bought or took a mortgage on? If so, to whom were you referred? And by whom were you so referred?

6. Did Collins, during your negotiations, make any statements to you as to in whom the rights or titles to the property were? If so, what were they?

7. If you paid any cash on any purchase you made, into whose hands did you pay it? Did Collins assent to this?

8. Do you know of any buildings erected on, or improvements made on the property known as the property in Mobile, recovered by Collins of Joshua Kennedy's heirs and devisees or executors? If so, describe them, their extent and value, and when they were made. State particularly who contracted for such. Who superintended the same?

9. Do you know anything of a power of attorney made by Thompson and James Campbell, to Sidney E. Collins and Wm. F. Cleveland, in reference to said property, or did you, before 1853, or

in 1853, hear Sidney E. Collins say anything of the existence or contents thereof? If so, what was it?

10. State all you know in reference to Collins's having acted with others, about the selling, building, improving, and renting all or any part of the property recovered in said cause of Collins *vs.* Kennedy.

Further interrogatory to Jacob Magee alone, by defendants.

1. Do you know of any alley-way projected or laid out through all or any portion of said property? If so, state all you know about them, if they have been extended, when and by whom, and for what purpose was it done. Give the length of such extension of the alley-ways since February, 1851.

2. Do you know of any alley-ways having existed around said property sold from said Collins tract by Joshua Kennedy? And if so, state all you know about the same. State whether any houses built on said property were constructed with reference to alley-ways.

3. State every fact you may know, showing the extent and value of improvements and filling up made by Joshua Kennedy, or his executors or heirs, upon the property before 1851. State any such made by any vendees of Kennedy. And state how such affected the value of the Collins property. Have you, at any time before 1853, had any conversations with Sidney Collins tending to show who were interested with him in the real estate in Mobile, recovered in the suit of said Collins *vs.* Kennedy and others? If so, state what he said.

5. What was the value of the Collins property before and up to 1851? Was there a rise in Mobile City property about 1851 or 1852? If so, what was the extent of it?

6. Do you know of any participation in the suit of Collins *vs.* Kennedy by Collins? If so, state all you know about this matter.

Further interrogatories by the defendants to William Jones, Jr., alone.

1. Did you lend any money on the faith of said property, or did you take a mortgage on it, or any part of it? If so, at whose instance, and on whose credit particularly did you do it? Explain the whole transaction.

2. Who signed any note or notes given you on account of said matters?

3. Did Collins or any one else, in his presence and with his assent, make any statements or representations to you as to the objects and purposes to which the money was to be applied? If so, state all that was said on this subject.

General interrogatory to all said witnesses by the defendants.

State any other matter or thing that you may know which will

benefit defendants as fully and particularly as if you were specially interrogated.

Notice of the time and place of examining these witnesses required.

CHANDLER, SMITH, & HERNDON,
Sol'rs for defendants.

Filed 1 Nov., 1856. GEO. E. HOLT, *Clerk.*

Objections filed to cross-interrogatories by complainant.

The complainant objects to the second cross-interrogatory to Jacob Magee (alone), as irrelevant and illegal; also to the following 3 cross-interrogatories to the said witness Magee, for the same reasons.

Complainant objects to the last general interrogatory to all the witnesses, because it does not conform to the rule of the Supreme Court.

K. B. SEWALL,
Sol'r and of counsel for complainant.

Filed 1 Nov., 1856. GEO. E. HOLT, *Clerk.*

No. 19. *Deposition of Jacob Magee.*

The said witness, in answer to the several direct, cross, and additional interrogatories propounded to him as aforesaid, answers and says, on oath, as follows:—

1. I know all the parties. I have known Collins about 5 years. Cleveland, Campbell, and Thompson, I have known 20 years.

2. I have received a warranty deed from Collins and wife, and have the original deed in my possession. I have also a quit-claim title from Thompson, Cleveland, and Campbell, to the same property, correct copies of all which are hereto annexed, marked A and B, and I refer to them for a correct description of the property thereby conveyed. I bargained with Wm. F. Cleveland, in the presence of James Campbell, for the property, which was subsequently confirmed by Sidney E. Collins, who informed me that the only legal title was in him, and I then made the requisition of a warranty title from him and his wife.

3. I do not know in whose handwriting the conveyances are. They were brought to me ready prepared by Cleveland, Campbell, and Collins.

The value of said lot was fifteen thousand dollars.

4. The only direction I gave was to make me a good and perfect title to the property, and I required Cleveland and Collins to give me the warrantee deed of Collins and wife, and a quit-claim deed from Thompson, Cleveland, and Campbell.

5. Witness knows nothing.

Answers of said witness to cross-interrogatories.

1. I negotiated with Wm. F. Cleveland and James Campbell, and the negotiation was subsequently approved by Collins.

2. They did. Collins represented that himself, Cleveland, Thompson, and Campbell, were the owners of the property.

3. I gave a mortgage and notes. A copy of the mortgage is hereto annexed, marked C, showing the terms and conditions upon which the property was purchased.

The notes and mortgage to Collins and Cleveland.

4. I refer to answers to second interrogatory and cross-interrogatory 3d for copies of papers in my possession. I have none others.

5th. I was referred to John A. Campbell, by Collins and Cleveland.

6th. He did, as I have previously answered.

7th. I paid no money at the time of purchase. The notes given for the property and interest were promptly paid in bank at maturity, and my recollection is, that Collins was the last indorser on the notes.

8. Rives, Battle & Co. erected in the summer of 1852, four stores, the value of which I should judge to be about fifty thousand dollars. Dorrance & Sons erected one store worth about twelve thousand dollars, and Robert W. Smith one worth about twelve thousand dollars. Cleveland and his associates (Collins, Campbell and Thompson) erected some five or six stores, worth I should think ten or twelve thousand dollars each. They were contracted for, and superintended personally by Wm. F. Cleveland. All the above property is bounded by St. Anthony, on the south by St. Louis, and between Royal on the east and the river.

9. I have heard of a power of attorney of the nature inquired of spoken of, both by Collins and Cleveland. I never saw it. I heard Collins say that the power was a full one, and conferred ample authority to sell and to lease.

10. Collins acted with Cleveland in selling and leasing the property. He was frequently where the buildings were being erected.

Answers to further Interrogatories to witness alone.

1st special. I know of two alley-ways, one leading from St. Louis to St. Anthony Streets in the rear of the stores erected by Rives, Battle & Co., the other from Water Street to Commerce Street, running from Commerce Street to Water Street, between the two blocks of stores erected by Rives, Battle & Co. There has been an alley-way laid out around the building at the northeast corner of St. Louis and Water Streets, said building occupying one hundred feet square, the lot upon which it stands, having been purchased by Campbell and Cleveland from Joshua Kennedy some 15 or 20 years since. This alley-way has been in existence ever since Campbell and Cleveland erected their building. The present alley-ways are mere extensions of the old alley-ways, the object of the parties being to afford easy access to the rear of their stores.

2d special. I have stated all I know in my answer to the preceding interrogatory.

3d. Within my recollection nearly the whole property has been

covered by water, and is now filled up at great expense. But by whom done, and the cost of doing, I have no knowledge.

4th. I have had repeated conversations with Collins touching the land recovered from Joshua Kennedy's heirs, during the pendency of the suit and since, and he always stated that Cleveland, Campbell and Thompson, were interested in the property. After the suit was determined, he said he had conveyed to Campbell, Cleveland and Thompson, but had not conveyed to Primrose, who also had an interest. I never heard Collins say anything against the interest of Campbell, Cleveland and Thompson, until about the time, or after the commencement of this suit, when he said he had been overreached, that they had got too much, and he would be able to prove it.

5th special. I cannot form any just or correct estimate of the value inquired of.

6th. I know nothing in answer to this question.

To General Interrogatory.

I know nothing further. JACOB MAGEE.

Exhibits.

A.

This indenture made the first day of April, in the year of our Lord one thousand eight hundred and fifty-two, between Sidney E. Collins of the County of Mobile and State of Alabama of the first part, and Jacob Magee of said county and State of the second part, witnesseth, That the said party of the first part for and in consideration of the sum of fifteen thousand dollars lawful money of the United States of America to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part his heirs, executors and administrators forever released and discharged from the same by these presents, has granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, enfeoff, convey and confirm to the said party of the second part, his heirs and assigns forever, all that certain lot or parcel of land in the city of Mobile, and situated between St. Anthony and State Streets, having a front on Royal Street of three hundred feet, by a depth on St. Anthony and State Streets of one hundred and fifteen feet more or less, and bounded on the north by State Street, on the south by St. Anthony Street, on the west by Royal Street, and on the east by Hall & Carter's warehouse; together with all and singular the tenements, hereditaments, rights, members, privileges and appurtenances unto the above mentioned and described premises belonging, or in any wsie appertaining; to have and to hold the above granted and described premises with the appurtenances unto the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit and behoof of

the said party of the second part, his heirs and assigns forever. And the said Sidney E. Collins for himself and his heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the hereditaments and appurtenances unto the said party of the second part, his heirs and assigns against the said party of the first part and his heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant, and by these presents forever defend. And the wife of Sidney E. Collins, Louisa R. Collins, for and in consideration of the sum of ten dollars to her paid by the said Jacob Magee, the receipt of which is hereby acknowledged, releases and relinquishes all her right, claim and title of dower in and to said described premises.

In witness whereof, the parties to these presents, have hereunto set their hands and seals the day and year first above written.

SID. E. COLLINS, [SEAL.]
LOUISA R. COLLINS, [SEAL.]

THE STATE OF ALABAMA,
County.

Be it remembered, that the above named Sidney E. Collins, of the city of Mobile, Ala., personally appeared before me, George Conway, a Notary Public in and for the county and State aforesaid, and acknowledged that he signed, sealed and delivered the foregoing deed, on the day and year therein mentioned, to the aforesaid Jacob Magee. Also personally appeared before me, Louisa R. Collins, wife of said Sidney E. Collins, who being examined separate and apart from her said husband, and the contents being made known to her, she then and there declared that she freely and voluntarily renounced all claim and right of dower to the within described real estate.

Given under my hand and seal, this second day of April, in the year of our Lord one thousand eight hundred and fifty-two.

GEORGE CONWAY, [L. S.]
Notary Public.

"Received for record April 9th, 1852."

STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said county, do hereby certify that the foregoing is a true and correct copy or transcript, taken from the records, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and seal of said court, this 30th day of January, A. D. 1856.

[L. S.] JNO. A. HITCHCOCK, *Judge.*
A. F. S. B., *Com'r.*

B.

To all to whom these presents shall come, greeting: Know ye,

that we, William F. Cleveland, James Campbell and Drury Thompson, of the county of Mobile and State of Alabama, for and in consideration of the sum of fifteen thousand dollars, lawful money of the United States of America, to us in hand paid, the receipt whereof is hereby acknowledged, have remised, released and forever quit claimed, and by these presents do remise, release and forever quit claim unto the said Jacob Magee, in his full and actual possession now being, and to his heirs and assigns forever, all the estate, right, title, interest, use, trust, property, claim and demand whatsoever, at law as well as in equity in possession, as well as in expectancy, of, in, to or out of all and singular that lot or parcel of land situate in the city of Mobile, between St. Anthony and State Streets, having a front on Royal Street of three hundred feet, by a depth on State and St. Anthony of one hundred and fifteen feet, more or less, and bounded on the north by State Street, on the south by St. Anthony Street, on the west by Royal Street, and on the east by Hall & Carter's warehouse. To have and to hold the said released premises unto the said Jacob Magee, his heirs and assigns, to his own proper use and benefit and behoof forever. So that neither the said Cleveland, Campbell or Thompson, nor their heirs or assigns, nor any other person or persons in trust for them, or in their name or names, or in the name, right or stead of any of them, shall or will, can or may by any ways or means whatever hereafter have, claim, challenge, or demand, any right, title, interest or estate, of, in, to, or out of the said premises above described and hereby released. But that they, the said Cleveland, Campbell and Thompson, or their heirs, and each and every of them from all estate, right, title, interest, property, claim and demand whatsoever of, in, to, or out of the said premises or any part thereof, are, is, or shall be by these presents forever excluded or debarred, and Maranda, wife of the said Cleveland, and Mary C., wife of the said Campbell, for and in consideration of the sum of one dollar to them paid by the said Jacob Magee, the receipt of which is hereby acknowledged, do hereby release and relinquish all their right, title and claim of dower in and to the said described premises. In witness whereof the said Cleveland, Campbell and Thompson have hereunto set their hands and seals this first day of April, in the year of our Lord one thousand eight hundred and fifty-two.

W. F. CLEVELAND, [SEAL.]
MIRANDA CLEVELAND, [SEAL.]
JAMES CAMPBELL, [SEAL.]
MARY C. CAMPBELL, [SEAL.]
DRURY THOMPSON, [SEAL.]

Signed, sealed and delivered in presence of
GEORGE CONWAY.

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that the within named William F. Cleveland,

James Campbell and Drury Thompson appeared personally before me, George Conway, a Notary Public in and for said county and State, and acknowledged that they signed, sealed and delivered the within deed of quit claim to Jacob Magee, on the day and year, and for the uses and purposes therein mentioned. Also personally appeared before me, Miranda, wife of said Wm. F. Cleveland, and Mary C., wife of said James Campbell, who being examined separate and apart from their said husbands, acknowledged that they freely and voluntarily renounced all right and title to dower, in and to the within described real estate.

In witness whereof I have hereunto set my hand and seal official, at Mobile, this first day of April, A. D. 1852.

[L. S.] GEORGE CONWAY.

"Received for record April 9, 1852." *Notary Public.*

STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said county, do hereby certify that the foregoing is a true and correct copy or transcript taken from the records as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and seal of said court, this 30th day of January, A. D. 1856.

[L. S.] JNO. A. HITCHCOCK.

Exhibit B. F. S. B., *Com'r.* *Judge.*

C.

STATE OF ALABAMA,
Mobile County.

Know all men by these presents that I, Jacob Magee, of said county and State, for and in consideration of the sum of fifteen thousand dollars to me in hand paid by Sidney E. Collins, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, convey and confirm unto Sidney E. Collins, his heirs and assigns forever, all that certain lot or parcel of land in the city of Mobile, situated between St. Anthony and State Streets, having a front on Royal Street of three hundred feet, by a depth on St. Anthony and State Streets of one hundred and fifteen feet, more or less, bounded on the south by St. Anthony Street, on the north by State Street, on the west by Royal Street, on the east by Hall & Carter's warehouse. Together with all and singular the tenements, hereditaments, rights, members, privileges and appurtenances unto the above mentioned and described premises with the appurtenances unto the said Sidney E. Collins, and to his heirs and assigns and to their sole and only proper use, benefit and behoof forever. Provided always, and these presents are upon this express condition, that if

the said Jacob Magee shall well and truly pay to the said Sidney E. Collins the sum of twenty-three thousand and six hundred dollars due by sixteen certain promissory notes all made and signed by Jacob Magee, dated Mobile, April 1st, 1852, payable to the order of Sidney E. Collins, negotiable and payable at the Bank of Mobile, one note being due on the 2d of July, 1853, for $800; one due on the 2d July, 1854, for $800; one due on the 2d July, 1855, for $800; one due on the 2d July, 1856, for $800; one due on the 2d July, 1857, for $800; one due 2d July, 1858, for $800; one due 2d July, 1859, for $800; one due 2d July, 1860, for $800; and one due 2d July, 1861, for $800; and one due 2d July, 1861, for ten thousand dollars; one due the 2d June, 1855, for twenty-five hundred dollars; one due 2d June, 1856, for twenty-five hundred dollars; one due 2d June, 1853, for $400; one due 2d June,1854, for $400; one due 2d June, 1855, for $400; and one due 2d June, 1856, for $200; then these presents shall cease, determine and be void, otherwise to be and remain in full force.

Given under my hand and seal this first day of April, in the year of our Lord one thousand eight hundred and fifty-two.

JACOB MAGEE, [SEAL.]
MARY E. MAGEE. [SEAL.]

Signed, sealed, and delivered in presence of
GEORGE CONWAY.

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that on this, the first day of April, A. D. 1852, before me, George Conway, a notary public in and for Mobile County, and State aforesaid, personally appeared the within named Jacob Magee, who acknowledged that he signed, sealed and delivered the within instrument of writing on the day and year, and for the uses and purposes therein expressed. Also personally appeared Mary E. Magee, wife of said Jacob Magee, who being examined separate and apart from her said husband, acknowledged that she freely and voluntarily renounced all right, title and interest of dower, in and to the within described real estate.

In testimony whereof I have hereto set my hand and seal official this the day and year above written.

[L. S.] GEORGE CONWAY, *Notary Public.*

"Received for record April 10, 1852."

THE STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said county and State, do hereby certify that the foregoing is a true and correct copy or transcript, taken from the records as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and seal of said court, this 30th day of January, A. D. 1856.

[L. S.] JNO. A. HITCHCOCK, *Judge.*

Exhibit C. F. S. B., *Com'r.*

The foregoing deposition of Jacob Magee was taken, subscribed and sworn to, at the city of Mobile, on the 13th day of December, 1856, before Frederick S. Blount, Esq., a commissioner appointed to take testimony in said cause.

Filed 15th March, 1857. GEO. E. HOLT, *Clerk.*

No. 20. *Deposition of Charles W. Dorrance.*

The said witness, in answer to the several direct and cross-interrogatories as aforesaid, propounded to him, answers and says on oath, as follows:—

1. I have known Sidney E. Collins since about the 1st of November, 1852. I have known all the other parties since 1834.

2. I bought a lot in June, 1852, and attach a copy of the deed and mortgage to my answer, to these direct and cross-interrogatories marked Exhibits A and C. The ratification of the purchase by William F. Cleveland, James Campbell and Drury Thompson, is marked Exhibit B. I bargained for said lot with William F. Cleveland, and was told the title was in the name of Sidney E. Collins, and other parties were interested with him, who would also sign the deed.

3. I do not know by whom the papers were drawn up, or in whose handwriting. The value of said lot was ten thousand dollars.

4. I gave no directions as to drawing conveyances.

5. I know nothing further.

Answers to cross-interrogatories.

1. I negotiated with Wm. F. Cleveland alone.

2. All seemed harmonious. I had never seen Collins until some months after the purchase was concluded.

3. I gave a mortgage marked Exhibit C, hereto attached. I gave notes amounting to eight thousand dollars, payable to the order of Sidney E. Collins, and two thousand dollars cash, all of which were given and delivered to William F. Cleveland, to the best of my recollection. I know not by whom they were drawn.

4. I have appended copies of all the papers relating to said purchase.

5. I was referred by Wm. F. Cleveland to a printed decision of the Supreme Court of the United States as to the title, to the best of my recollection.

6. I did not then know Sidney E. Collins personally, and had no conversation with him whatever.

7. I paid two thousand dollars in cash to Cleveland, and paid all the notes to Sidney E. Collins before maturity. He made no objection to the sale.

8. Rives, Battle & Co. erected in the summer of 1852 four stores, the value of which I should judge to be about fifty thousand dollars. Dorrance & Son erected one store worth about twelve thousand dollars, and Robert M. Smith one store worth about twelve thousand dollars. Cleveland and his associates (Collins, Campbell and Thompson) erected some five or six stores, worth, I should think, from ten to twelve thousand dollars each. These were contracted for, and superintended personally by William F. Cleveland. All the above property is bounded on the north by St. Anthony, on the south by St. Louis, and between Royal Street on the east and the river.

9. I know nothing of a power of attorney made by Thompson and Campbell to Collins and Cleveland, and never heard Sidney E. Collins allude to it.

10. I know nothing further. C. W. DORRANCE.

Exhibits.

A.

A certified copy of deed of conveyance from Sidney E. Collins and wife to Dorrance and Sons, dated 16 June, 1852, marked "received for record Nov'r 11, 1852," and being Exhibit No. 7 to the depositions of Wilson and Taylor. See the same copied on page 788.

Exhibit A. F. S. B., *Com'r.*

B.

A certified copy of the confirmation of the foregoing deed by Wm. F. Cleveland, James Campbell and wife, and Drury Thompson, dated 16 June, 1852. Also Exhibit No. 7 to depositions of same witnesses. See it copied, page 788.

Exhibit B. F. S. B., *Com'r.*

C.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that we, Charles W. Dorrance, Gideon M. Parker, and Robert C. Macey, copartners, under the name and style of Dorrance & Sons, of the city of Mobile, parties of the first part, do sell, and by these presents have sold and conveyed, unto Sidney E. Collins, William F. Cleveland, James Campbell, and Drury Thompson, parties of the second part, for and in consideration of the sum of eight thousand dollars due by us to the parties of the second part, all that lot and parcel of land lying and being in the city of Mobile, to wit, on the northwest corner of St. Louis and Water Streets, bounded and described as follows: on the south by St. Louis Street, on the east by Water Street, and on the west and north by lands belonging to Sidney E. Collins and others, having a front of one hundred and ten feet on St. Louis Street, with an equal and parallel side on the north, and fifty feet front on Water Street, with an equal and parallel line on the west, being the said lot of land this day conveyed by deed from Sidney E. Collins and wife to the

said parties of the first part, and to them ratified and confirmed by the remaining parties of the second part; to have and to hold the above described premises, with the appurtenances thereof, unto the said parties of the second part, their heirs and assigns. Nevertheless always conditioned that if the said parties of the first part, their heirs and assigns, shall well and truly pay, or cause to be paid, unto the said parties of the second part, their heirs and assigns, the three following described promissory notes, this day made and delivered by the said parties of the first part to the said parties of the second part, all bearing common date on the first day of May, A. D. 1852, and payable annually on the first days of May in the years of our Lord 1854, 1855, and 1856, to Sidney E. Collins, for the sum of two thousand dollars each, with interest from the first day of November, A. D. 1852, according to the tenor and effect thereof, or shall pay, or cause to be paid, to the said parties of the second part, their heirs or assigns, all or either of the said notes at any time prior to the date of their several payments, so that the aggregate sum of six thousand dollars, being the balance due (after a cash payment of two thousand, and a note given for two thousand dollars, not included in this mortgage) for the purchase-money of the above granted lot, shall be paid at any time prior to the date of the payment of the note payable in 1856, with interest, then this deed to be void, otherwise to remain in full force and effect.

Signed and sealed this 16th day of June, A. D. 1852.

C. W. DORRANCE. [SEAL.]
MARY A. DORRANCE. [SEAL.]
GIDEON M. PARKER. [SEAL.]
JANE E. PARKER. [SEAL.]
ROBERT C. MACY. [SEAL.]
JULIA A. MACY. [SEAL.]

THE STATE OF ALABAMA,
Mobile County.

Be it remembered, that on this the twenty-third day of October, A. D. 1852, before me, George Conway, a Notary Public in and for Mobile County, State aforesaid, personally appeared the within named Charles W. Dorrance, Gideon M. Parker, and Robert C. Macy, who acknowledged that they signed, sealed, and delivered the within instrument of writing on the day and year, and for the uses and purposes therein mentioned.

Also personally appeared before me, Mary A. Dorrance, wife of C. W. Dorrance, Jane E. Parker, wife of Gideon M. Parker, and Julia A. Macy, wife of Robert C. Macy, who being examined separate and apart from their respective husbands, acknowledged that they signed and renounced all right of dower voluntarily and without any fear, threat, or compulsion of their said husbands.

In witness whereof, I have hereto set my hand and seal official, the day and year above written.

[SEAL.] GEORGE CONWAY, *Notary Public.*

Indorsed, "Received for record November 30, 1852."

Written across the face of said deed, "We hereby acknowledge satisfaction in full of this mortgage. November 22d, A. D. 1853.

SIDN. E. COLLINS, [SEAL.]
for himself and party."

THE STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said county, do hereby certify that the foregoing is a true and correct copy or transcript taken from the records, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and seal of said Court, this 30th day of January, A. D. 1856.

[SEAL.] JNO. A. HITCHCOCK, *Judge.*

Exhibit C.
F. S. B., *Com.*

The foregoing deposition of Charles W. Dorrance was taken, subscribed, and sworn to at the city of Mobile, on the 11th day of December, 1856, before Frederick S. Blount, Esq., a commissioner appointed to take depositions in said cause.

Filed 15th March, 1857. GEO. E. HOLT, *Clerk.*

No. 20. *Deposition of Robert W. Smith.*

The said witness, in answer to the several direct and cross-interrogatories propounded to him, on oath answers and says as follows:—

1. I have known the defendants for twelve or fifteen years. I have known the plaintiff five or six years.

2. Sidney E. Collins and wife gave me a warranty deed to a lot of land on Water Street, between St. Louis and St. Anthony Streets, and next to corner of St. Louis, which is now in my possession. A correct copy of the deed, as well as other papers connected with the transaction, are attached to my answers to cross-interrogatories, and certified to by the Judge of Probate of Mobile County. In the property purchased by me, I negotiated with Collins, Cleveland, and Campbell jointly. All that I remember of having been said was that the title would be guaranteed.

3. I do not know, but always thought the papers were drawn by Drury Thompson. I paid $8,500 for my lot, which I thought its full value.

4. I do not remember having given any special instructions or directions as to how the deed should be drawn, further than it was to warrant the title.

5. I know nothing further.

Answers to Cross-Interrogatories.

1. With Mr. Sidney E. Collins, Mr. William F. Cleveland, and Mr. James Campbell, jointly. They were the negotiators with me, and I saw them together.

2. They did act in harmony. My impression was that they were jointly interested, and I do not remember that Collins made any remark specially on the subject.

3. I gave a mortgage. I gave notes for part of the cost of the land. The mortgage or mortgage deed was made in favor of Sidney E. Collins, Wm. F. Cleveland, James Campbell, and Drury Thompson. The notes were payable to Sidney E. Collins, and were, I presume, delivered to him.

4. A copy of all the papers are hereto attached, marked A and B, as certified to by the Probate Judge of Mobile County. The memorandum attached, marked C, was made the day I bought the lot of land, and signed, to the best of my recollection, by Mr. Collins, thus: "Collins & Cleveland," Mr. Cleveland being present, and perhaps also Mr. Campbell.

5. I do not recollect having been so referred to any one.

6. None that I remember.

7. I paid to Mr. Sidney E. Collins four thousand dollars cash.

8. I have no knowledge of the matters alluded to in this interrogatory.

9. I know nothing of such a paper.

10. I know nothing beyond what is stated above.

ROBERT W. SMITH.

Exhibits.

A.

A certified copy of deed of conveyance from Sidney E. Collins and wife to Robert W. Smith, dated 1st March, 1853, endorsed "Received for record 8 March 1853," and which is Exhibit No. 9 to Wilson and Taylor's deposition, see page 796.

Exhibit A.
F. S. B., *Com'r.*

B.

A certified copy of the confirmation of said deed, by Cleveland, Campbell and wife, and Thompson, dated 1 March, 1853, and also is Exhibit No. 9 to said depositions, see page 796, etc.

Exhibit B.
F. S. B., *Com'r.*

C.

We have this day sold to Robert W. Smith a lot next adjoining Dorrance & Sons (north), on Water Street, 50 feet front, running back 110 feet, terms of sale four thousand dollars cash, the balance,

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say forty-five hundred dollars, in one and two years, with interest at 8 per cent. per annum, title guaranteed.

Exhibit C. } COLLINS & CLEVELAND.
F. S. B., *Com'r.* }

Mortgage.

STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that I, Robert W. Smith, of the city of Mobile, of the first part, do bargain, sell, and convey, and by these presents have bargained, sold, and conveyed unto Sidney E. Collins, William F. Cleveland, James Campbell, and Drury Thompson, of said city of Mobile, parties of the second part, for and in consideration of the sum of five thousand and forty dollars, due by me to the said parties of the second part, all that lot and parcel of land, lying and being in the city of Mobile, in the county and State aforesaid, bounded and described as follows, to wit: on the east side by Water Street, on which it fronts fifty feet, on the south by a lot heretofore conveyed by Sidney E. Collins and wife to Dorrance & Sons, on the west by lands of said Collins and others, and on the north by an alley on which it fronts one hundred and ten feet, the said lot fronting 50 feet as aforesaid on Water Street, and extending back with the same width in rear as front one hundred and ten feet, being the same lot of land this day conveyed by deed from Sidney E. Collins and wife to the said party of the first part, and to him ratified and confirmed by the remaining parties of the second part. To have and to hold the above described premises, with the appurtenances thereof, unto the said parties of the second part, their heirs and assigns forever. Nevertheless always, and conditioned that if the said party of the first part shall well and truly pay or cause to be paid to the said parties of the second part, their heirs and assigns, the two following described promissory notes, this day made and delivered by the said party of the first part to the said party of the second part, all bearing common date on the first day of March, A. D. 1853, and payable severally on the first days of March, 1854 and 1855, to Sidney E. Collins or order, one of which said notes is for the sum of two thousand five hundred and thirty dollars, payable on the 1st day of March, A. D. 1854; and the other of said notes, for the sum of two thousand six hundred and ten dollars, payable on the first day of March, A. D. 1855, then these presents shall cease, determine, and be void, otherwise to be and remain in full force.

In testimony whereof, I have hereunto affixed my hand and seal, this the first day of March, in the year of our Lord one thousand eight hundred and fifty-three. ROBERT W. SMITH, [SEAL.]

STATE OF ALABAMA,
Mobile County.

I, Mordecai Thompson, a Notary Public in and for the county of

Mobile, State of Alabama, duly commissioned and sworn, do hereby certify that Robert W. Smith, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day, that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal official, this the 8th day of March, in the year of our Lord one thousand eight hundred and fifty-three.

[L. S.] MORDECAI THOMPSON, *Not Pub.*

Endorsed "Received for record March 8th, 1855."

Written across the face of said deed "Satisfied, cancelled, paid April 24th, 1855. SIDN. E. COLLINS.

Attest, W. P. BOOTH."

STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said county and State, do hereby certify that the foregoing is a true and correct copy or transcript taken from the records, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and seal of said Court, this 30th day of January, A. D. 1856.

[L. S.] JNO. A. HITCHCOCK, *Judge.*

The foregoing deposition of Robert W. Smith, was taken, subscribed, and sworn to at the city of Mobile, on the 27th day of November, 1856, before F. S. Blount, Esq., a commissioner in said cause. Filed 15, March, 1857. GEO. E. HOLT, *Cl'k.*

No. 20. *Deposition of William Jones, Jr.*

The said witness, in answer to the several direct, cross and additional interrogatories as aforesaid propounded to him, deposes and says on oath as follows:—

1. I have known Collins five or six years, Campbell and Cleveland over thirty years, and Thompson over twenty years.

2. William F. Cleveland negotiated with me for a loan of ten thousand dollars, which I consented to do; and upon the execution of a mortgage, and notes to secure its payment, a copy of which is hereto attached, marked Exhibit A, executed by Sidney E. Collins and wife, I advanced the money to Sidney E. Collins.

3. I do not know who drew the mortgage deed. I purchased no lot from Mr. Collins or any one else.

4. I gave none.

5. Knows nothing.

Answers to Cross and Additional Interrogatories.

1. William F. Cleveland was the sole and only negotiator with whom I had any intercourse in loaning the money mentioned in answer to second interrogatory.

2. Cleveland made the negotiation with me and Collins received

the money; in this they acted in perfect harmony. Collins represented to me that Cleveland, Campbell, and probably Thompson, were interested.

3. I took a mortgage from Sidney E. Collins and wife, and Collins's notes endorsed by Campbell & Cleveland, for the repayment of the ten thousand dollars loaned and interest. The notes were made payable to the order of James Campbell, and were delivered to me.

4. A copy of the mortgage is attached in answer to second interrogatory; no copy of the notes was taken. They are fully described in the mortgage. I have no other papers.

5. I was not referred to any one. I was perfectly satisfied that the notes were good without the mortgage.

6. Collins stated to me that the title to the property mortgaged to me was in himself, and that Cleveland, Campbell, and probably Thompson, were interested in it.

7. I made no purchase.

8. Buildings and improvements have been made on the property by Collins, Campbell, Cleveland, and Thompson, in the erection of brick stores between Commerce and Front Streets, by Dorrance & Sons on the northwest corner of Water and St. Louis Streets, and by Robert W. Smith & Co. next, north of Dorrance & Sons. The value of these improvements are from seventy-five to one hundred thousand dollars. Who were the contractors and superintendents I do not know.

9. I know nothing of the matter herein inquired of.

10. Collins appeared to act harmoniously with Cleveland and Campbell in improving the property between Commerce and Front Streets.

1st additional int. Collins called upon me with a mortgage and his note made payable to me for ten thousand dollars, which I refused to take. Having made the negotiation with Wm. F. Cleveland, I required Collins's note endorsed by Campbell and Cleveland, which was perfectly satisfactory to me without the mortgage. The mortgage alone as a security would not have been satisfactory, having no knowledge of the title.

2d additional int. Collins, Cleveland, and Campbell.

3d additional int. It was stated that the money was to be applied to the erection of stores between Front and Commerce Streets.

WM. JONES, Jr.

Exhibit A.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that I, Sidney E. Collins, of said county, in consideration of the sum of ten thousand dollars to me in hand paid by William Jones, Jr., of said county, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, and

confirmed, and by these presents do grant, bargain, sell, alien, convey, and confirm unto William Jones, Jr., his heirs and assigns forever, all that certain piece, parcel, or lot of land in the city of Mobile, being on the block that lies between St. Louis and St. Anthony Streets, and between Commerce and Front Streets, having a front on Commerce and Front Streets of two hundred and forty-five feet, and a front on St. Louis and St. Anthony Streets of eighty feet, bounded on *bounded on* the north by St. Anthony Street, on the south by St. Louis Street, on the east by Front Street, and on the west by Commerce Street, together with all and singular the tenements, hereditaments, rights, members, privileges, and appurtenances unto the above-mentioned and described premises belonging, or in any wise appertaining. To have and to hold the above-granted and described premises with the appurtenances unto the said William Jones, Jr., and to him, his heirs, and assigns, and to their sole and only proper use, benefit, and behoof forever. Provided always, and these presents are upon this express condition, that if the said Sidney E. Collins, his executors or administrators, shall well and truly pay to the said William Jones, Jr., his executors and administrators or assigns, the sum of fourteen thousand dollars, due by six certain promissory notes signed by the said Sidney E. Collins, dated Mobile, March 15th, eighteen hundred and fifty-two, payable to the order of James Campbell, and by him and William F. Cleveland endorsed, payable and negotiable at the Bank of Mobile; one for ten thousand dollars, due the first of April, eighteen hundred and fifty-seven; one for eight hundred dollars, due the first of April, eighteen hundred and fifty-three; one for eight hundred dollars, due the first of April, eighteen hundred and fifty-five; one for eight hundred dollars, due the first of April, eighteen hundred and fifty-six; and one for eight hundred dollars, due the first of April, eighteen hundred and fifty-seven; and one due the first of April, eighteen hundred and fifty-four, for eight hundred dollars, then these presents shall cease, determine, and be void, otherwise to be and remain in full force. And Louisa R., wife of the said C., for and in consideration of ten dollars to her paid by the said William Jones, Jr., hereby releases and relinquishes to him all her right and claim of dower in and to said premises.

Given under our hands and seals this fifteenth day of March, in the year of our Lord one thousand eight hundred and fifty-two.

SIDN. E. COLLINS, [SEAL.]
LOUISA R. COLLINS, [SEAL.]

Signed, sealed, and delivered, in presence of
GEORGE CONWAY.

THE STATE OF ALABAMA,
Mobile County.

Before me, George Conway, a Notary Public in and for the county and State aforesaid, personally appeared the within named Sidney

E. Collins, who acknowledged that *that* he signed, sealed, and delivered, the within instrument of writing on the day and year, and for the uses and purposes therein mentioned; also personally appeared before me, Louisa R. Collins, who, being by me examined separate and apart from her said husband, Sidney E. Collins, and the contents of said instrument being fully explained to her, she then and there declared that she freely and voluntarily renounced all right, title, and claim of dower, in and to the within mentioned real estate.

In testimony whereof I have hereunto set my hand and seal official, at Mobile, Ala., this 17th day of March, A. D. 1852.

[L. S.] GEORGE CONWAY, *Notary Public.*

"Received for record April 3d, 1852."

THE STATE OF ALABAMA,
Mobile County.

I, John A. Hitchcock, Judge of the Court of Probate in and for said county and State, do hereby certify that the foregoing is a true and correct copy or transcript taken from the records as the same remains of record and on file in my office.

[L. S.] In testimony whereof I have hereunto set my hand and seal of said Court, this 30th day of January, A. D. 1856.

JOHN A. HITCHCOCK, *Judge.*

The foregoing deposition of Wm. Jones, Jr., was taken, subscribed, and sworn to, at Mobile, before F. S. Blount, commissioner, &c., 27th Dec'r, 1856.

Filed 15th March, 1857. GEO. E. HOLT, *Clerk.*

No. 21. *Interrogatories to be exhibited to John Y. Thompson, a witness, at the instance of the Defendants in said cause.*

1. Do you know the parties?

2. Look at the Opinion hereto attached, and state if the same was published in your printing office in Mobile? When did you get the order to publish the opinion? When did you execute it? How many copies did you publish, and to whom were they delivered, and what were you paid?

3. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer?

CHANDLER, SMITH & HERNDON,
Defendants' Solicitors.

Filed 3d December, 1856. GEO. HOLT, *Clerk.*

No. 21. *Deposition of John Y. Thompson.*

The said witness to the interrogatories aforesaid, answers and says on oath:—

1. I know the parties.

2. I have examined the Opinion attached; it was published in my printing office in Mobile. I got the order to publish it on the 31st February, 1851, from William D. Primrose, Esq., and I think executed it immediately on its reception. I published 500 copies, and delivered them to Mr. Primrose. I was paid twenty-five dollars for publishing the copies of the Opinion.

3. I know nothing more material to the matters in issue in this suit. Have answered as fully as my information goes.

JOHN Y. THOMPSON.

The foregoing deposition of John Y. Thompson was taken, subscribed, and sworn to, at the city of Mobile, on the 18th day of December, 1856, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

The Opinion referred to in the foregoing deposition of the witness Thompson, is a printed copy of the Opinion of the Supreme Court of the United States in the case of Collins *vs.* The Executors and Heirs of Joshua Kennedy, deceased. *Clerk.*

No. 21. *Interrogatories to be exhibited to Robert Greig, a Witness at the instance of the Defendants in said cause.*

1. Do you know the parties?

2. Do you know the property bounded west by Royal Street, north by St. Anthony Street, south by St. Louis Street, and east by the channel of Mobile River, known as the Collins property?

3. Were you employed to build a wharf on said property? If so, state when, and who consulted you about it, with whom did you make the contract; what did it cost, and if the contract was in writing, annex a copy, if in your possession?

4. Do you know of other improvements being made on the property in 1852? If yea, state if the plaintiff, or the defendants, or William F. Cleveland, were present, directing and superintending the property, or the buildings and improvements. Did they act in concert and seem to be jointly interested in the improvement? State what they did and said.

5. While putting up the wharf was the complainant often present? Did he make suggestions in relation to the wharf, the improvements, or the property? State if you ever saw the complainant and Wm. F. Cleveland consulting together about the property, or the wharf, or giving directions in relation to the same.

6. Do you recollect, in 1853, of informing the complainant that Mr. Pond's hands were becoming very uneasy about their pay, and threatened to leave their work? If so, to what work did they refer to? State also what buildings Mr. Pond was putting up in 1852. Did he put up any on the Collins property in that year? If so, state how many, and where they were.

7. Do you know, or can you state or set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Defendants' Solicitors.

Filed 3d Dec'r, 1856. GEO. E. HOLT, *Clerk.*

Objections and Cross-interrogatories to the witness, Robert Greig, filed by the Complainant.

Complainant objects to so much of the 4th direct-interrogatory, to this witness, as asks whether the plaintiff, defendants, or William F. Cleveland, were present, "directing or superintending the property, or the buildings and improvements? Did they act in concert and seem to be jointly interested in the improvements," as leading, and as asking the witnesses' opinion.

Cross-Interrogatories.

1. Did you rebuild the St. Louis Street wharf, or the wharf in front of the Collins property in 1851, 2? If so, please state what was its condition before you rebuilt it, what it cost to rebuild it, and from whom and when you got your money.

K. B. SEWALL,
Of Counsel for Complainant.

Filed 13th Dec., 1856. GEO. E. HOLT, *Clerk.*

No. 21. *Deposition of Robert Greig.*

The said witness, in answer to the said direct interrogatories and cross-interrogatory, says, on oath:—

1. I know the parties.

2. I am acquainted with the property herein described, though not by the name of "the Collins property."

3. I was employed to build a wharf on said property. I think it was in 1851, and was consulted about it by William F. Cleveland. I made the contract with William F. Cleveland, and I regarded him and the complainant as partners in the matter. The reasons for my so regarding them was the fact that I saw them together a great deal, and because when I applied for money from time to time in the work, I was frequently paid by Collins, and receipted to Collins and Cleveland. Collins kept the books. The wharf cost
I think that the contract for building said wharf was a verbal one, and not in writing.

4. Other improvements were made in 1852, consisting of several large brick stores covering a whole square. I made the foundations for these buildings by driving piles. Collins and Cleveland were frequently together about the work whilst it was in progress, and seemed to be consulting together about it. The contract for this I

also made with Cleveland, Collins in this case also paying me the money due for the work. Mr. James Campbell was also frequently about the place making remarks as to the work, &c., saying that he had an interest in the property. Collins, Cleveland and Campbell seemed to me to be acting in concert in the matter, and to be jointly interested in the improvements, though I cannot now state their specific acts and words; they appeared, however, to act in concert.

5. During the construction of the wharf, complainant was present from time to time, though I cannot say that he made suggestions as to the work. I frequently saw him and Cleveland together about the property, and they seemed to be consulting together about it, and acting in concert. My contracts were made with Wm. F. Cleveland, and the directions as to the work were given by him, though, as above stated, he and Collins seemed to act in concert in the matter, and Collins paid out the money.

6. I do not remember informing complainant that Mr. Pond's hands were becoming uneasy as to their pay, &c., though I might have done so. I remember there was some dissatisfaction among his hands as to Mr. Pond's being behindhand, and possibly I did tell complainant about uneasiness. Mr. Pond was putting up buildings in 1852 on the property described in the first interrogatory. The buildings he was engaged in putting up there covered the whole of the front square. He may also have been engaged in putting up other buildings for other persons.

7. I believe I have stated fully all the matters within my knowledge as to the issue in this cause.

Answer to Cross-interrogatory.

1. I did rebuild the wharf inquired of. Its condition before I rebuilt it was bad, and the wharf was unsafe for use. There were before two wharfs, and in rebuilding I joined them together, thus enlarging the property. The cost was, I rebuilt it for Messrs. Collins & Cleveland, and got the money from them, either in cash, or by orders on Fettyplace, Goodman & Co.

ROBERT GREIG.

The foregoing deposition of Robert Greig was taken, subscribed, and sworn to at the city of Mobile, on the 18th day of December, 1856, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

No. 22. *Interrogatories to be propounded to John T. Taylor, a witness on behalf of the defendants in the said cause.*

1. At what time in 1854 were you first retained as a solicitor, or as the attorney of the complainant in the controversy in which this bill originates, or at what other time did your connection in the cause commence?

2. Who was then associated with you, or at what time was other counsel retained? Who are the attorneys in the suit?

3. What is the connection of William D. Primrose with the suit? Has he been a solicitor or counsellor of the complainant since your connection with it, or an adviser in the suit?

4. Was he consulted about the contents or allegations of the bill? or was the bill exhibited to him or made known to him before it was filed? or was any written statements prepared by him for the plaintiff or his counsel? Was he present at any of the consultations between the solicitors of the complainant, either when the complainant was, or was not present?

5. Did the said Primrose come with the complainant to any consultation or conversation respecting the case at which you was present? and was he present when you were retained?

6. State the number of times he attended upon you prior to the filing of this bill.

7. Where was the plaintiff in this suit when the bill was prepared and filed? When was the bill prepared and submitted to the plaintiff?

8. Did the plaintiff see this bill before it was filed?

9. Did he see any draft of the bill before he left here in the summer of 1855? Who drew it, and showed it?

10. Was a draft of the bill sent to him?

11. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Attorneys for Defendants.

Filed 24th March, 1857. GEO. E. HOLT, *Clerk.*

Additional Interrogatories to be propounded by the Defendants in said cause to John T. Taylor.

1. Are not Kiah B. Sewall and yourself, in some event of the suit, to have a contingent fee or fees? Are not you, one or both, in the event of success, to get a part of the subject matter of the suit? Are not you and Sewall, in some event, to get one or two of the stores on Front Street for your fees, or one store each, estimated to be worth from $18,000 to $20,000 each?

2. Is not the contract for professional services made by you and your associate, Kiah B. Sewall, that the plaintiff shall pay you each five thousand dollars for prosecuting this suit in the Circuit Court?

3. Is there not an addition of $2500 or $5000 or more for attending to the case in the Supreme Court? How much? Are not these sums in addition to the before mentioned conditional sums or property?

5. If the before mentioned statements are not correct, wherein are

they incorrect, and wherein are they correct? State particularly the whole terms and conditions, absolute and contingent, upon which this suit is undertaken and prosecuted.

5. The object of the foregoing interrogatories is to enable the court to compare the conduct of the solicitors in respect to the terms on which the former suit was conducted with that of those in this case, and to enable the court to see by such comparison the estimate by complainant himself of the services rendered him in the former suit. Please, therefore, answer fully and particularly as to each and every part of the foregoing interrogatories.

CHANDLER, SMITH & HERNDON,
Sol'rs for Deft's.

Filed March 27th, 1857. GEO. E. HOLT, *Clerk.*

No. 22. *Deposition of John T. Taylor.*

The said witness, in answer to the interrogatories aforesaid, says, on oath:—

1. I was retained by Mr. Collins on the 17th day of May, 1855. I was spoken to, and told some time before that day by Mr. Collins, that such a suit was in contemplation, and, if brought, my services would be expected, but our agreement was consummated on the day aforesaid.

2. Mr. K. B. Sewall was engaged with me on the day and date above set down. I don't know of any previous engagement of Mr. Sewall. I was told, when I was first spoken to, that I would be associated with Mr. Sewall. I know of no other counsel being engaged in the case.

3. I do not know of any connection William D. Primrose has with the suit. He has never been a solicitor or counsellor in the suit since my engagement, so far as I know. He has very frequently volunteered his counsel and advice to me since my engagement, always adverse to the bill, but I never paid any attention to him, as I never regarded him as having anything to do with our side of the case.

4. Primrose was never consulted about the contents of the bill, or any of its allegations, in my presence or knowledge. I don't know whether the bill, or any draft of it, was ever exhibited to him before it was filed. If so, I never knew it or heard of it. I don't know whether any written statement was ever prepared by him or not. I have never read or seen any such statement. He several times insisted on my reading a long written document, which, he said, was an opinion written after the answers came in, but I refused to read it, and do not know what was its contents. He never was present at any consultation in my presence.

5. He never came with the complainant or my associate to any such consultation. I don't remember of ever hearing him speak with the plaintiff in any manner touching the case since my employment. He was not present when I was retained. Mr. Collins and Mr. Sewall came alone to my office where my engagement was consummated.

Mr. Primrose never was treated in my presence, by Mr. Collins or my associate, as counsellor or adviser, or as having any interest whatever in the complainant's side of the case.

6. He never "attended on me" prior to or since filing of the bill.

7. I do not know where the complainant was while the bill was being prepared. The complainant had, at the time of my engagement, a written statement of his case prepared by himself, as I was informed, at great length and with great particularity. This was at the time handed over to Mr. Sewall, who was to draw the bill. Mr. Sewall was engaged several months, off and on, about the bill, as I understood, before it was completed, and, I think, Mr. Collins was with him, personally directing it, though I cannot say as to this, as I do not remember when Mr. Collins left, and my attention was seldom called to the matter. I know he was not here when the bill was filed.

8. I do not know, of my own knowledge, whether the complainant ever saw the bill before it was filed. I was told by Mr. Sewall, at the time it was filed, that he had seen it, or a draft of it, and had ordered it to be filed as soon as it could be copied over, and the formal parts put to it. After Mr. Collins came back I asked him about it, and he also told me that he did not leave until he saw the stating parts all finished, and he assumed the bill as his own in every particular.

9. I do not know, of my own knowledge, whether Mr. Collins ever saw any draft of the bill or not, nor do I know whether any draft was ever prepared for him or any one else.

10. I don't know whether any draft of the bill was ever sent to Collins or not. I never saw any statement, draft or bill, after it went into Mr. Sewall's hands until a few days before it was filed. Mr. Collins was then out of the State, as I understood.

To the additional interrogatories John T. Taylor answers as follows:—

1. Our fees are to some extent conditional. We are in no event to get any part of the subject-matter of the suit. We are not to receive any of the stores, or any interest in them.

2. I answer, no.

3. I answer, no.

4. We are to receive one thousand dollars each for trial of the cause in the Circuit Court, whether gained or lost; and if carried to the Supreme Court of the United States by either party, we are to receive a further joint fee of $1,500 for attending to it there. These fees are to be paid at all events. We have a further fee on condition, which is, that if the suit is successful, and the contracts all set aside, he is to pay us five thousand dollars each; and if compromised before final trial, we are to be paid $2,500 each. Any other statement of what our fees are is untrue so far as I know or am concerned. The contract for fees with Mr. Sewall and myself is the same, made at

the same time in my office, and embraced in the same writing. I know of no one else who is to receive any fee or reward whatever.

5. I have nothing more to state. I have fully and voluntarily answered all the interrogatories put to me, though I have been unable to discover the relevancy of most of them. But I now state that in answering I did not intend to waive any legal objections to their use that may be raised by my associate on the part of himself or his client. JOHN T. TAYLOR.

The foregoing deposition of the witness John T. Taylor, Esq., was taken, subscribed, and sworn to at the city of Mobile, on the thirteenth day of April, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 13th April, 1857. GEO. E. HOLT, *Clerk.*

No. 23. *Interrogatories to be exhibited to James Riley, Cade M. Godbold, W. P. Hammond, Ovid W. Savage, J. B. Calef, and John C. McGuire, Witnesses at the Instance of the Defendants in said Cause.*

1. Do you know the parties?

2. Do you know the property bounded south by St. Louis Street, west by Royal Street, north by St. Anthony Street, and east by the Mobile River? If yea, state if you know of any improvements having been made on said property in 1852. If so, state by whom they were made; were they put up by the complainant or defendants, or either of them?

3. Did you or the members of your firm furnish any materials of any kind or description towards the said buildings or improvements? If yea, state who spoke to you in relation to the same, who made the contract or purchase, what articles or materials were furnished or sold, who paid the bills or accounts, and how much was paid.

4. Were the said purchases made by the plaintiff or defendants, or either of them? Did you see the plaintiff and defendants William F. Cleveland and James Campbell together purchasing or ordering articles? Did they act together in putting up the buildings? Did you see them both there superintending the buildings and the property, or in making purchases for the erection of the buildings? State fully.

5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this suit, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

CHANDLER, SMITH & HERNDON,
Defendants' Solicitors.

Filed 26th December, 1856. GEO. E. HOLT, *Clerk.*

No. 23. *Deposition of Ovid W. Savage.*

The said witness, in answer to the said interrogatories, says on oath:—

1. I know the parties.

2. I know the property described, and of improvements having been made on it in 1852. So far as my information extends, said improvements were made by James Campbell and Wm. F. Cleveland. I did not know until a year or two afterwards that complainant was at all concerned in the matter. I then learned he was interested, in consequence of having been referred to him by Campbell and Cleveland for payment of the balance of my account; and on application to him for payment thereof, he informed me that he was interested in the property and buildings, and paid me my balance.

3. The firm of Savage & Calef, of which I was then a member, furnished lime and cement to the value of $\$1,855\frac{55}{100}$ towards the buildings. These articles were furnished by us in different quantities and at different times, from 14th April, 1852, to 11th December, 1852, inclusive. The purchases were made of us by Messrs. Campbell and Cleveland, chiefly by Mr. Campbell, whom I knew most in the matter. They were both present together sometimes, and sometimes one and then the other. The accounts, amounting to the sum above stated, with, to the best of my knowledge, the exception of $37, were paid by Messrs. Campbell and Cleveland. This balance of $37 was paid about two years after by Mr. Collins, as stated in my answer to the last.

4. Have already said they were made by Campbell and Cleveland. Never saw the plaintiff with these gentlemen purchasing articles. Mr. Collins, as above stated, told me afterwards that he was interested in the buildings; and, I suppose, in consequence of it he acted with the defendants in their erection. Saw Messrs. Campbell and Cleveland frequently about the property, apparently directing the work, &c. Never saw Collins, to know him, until a year or two afterwards; and, as before said, the purchases made of our firm were made by Campbell and Cleveland.

5. I have stated about all I know in relation to the matters at issue in this suit.

O. W. SAVAGE.

The foregoing deposition of Ovid W. Savage was taken, subscribed, and sworn to at the city of Mobile, on the 14th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

No. 23. *Deposition of J. B. Calef.*

The said witness, in answer to the said interrogatories, says on oath:—

1. I know the parties.

2. I know the property inquired of, and also know of improvements having been put on it in 1852. To the best of my knowledge, said

the same time in my office, and embraced in the same writing. I know of no one else who is to receive any fee or reward whatever.

5. I have nothing more to state. I have fully and voluntarily answered all the interrogatories put to me, though I have been unable to discover the relevancy of most of them. But I now state that in answering I did not intend to waive any legal objections to their use that may be raised by my associate on the part of himself or his client. JOHN T. TAYLOR.

The foregoing deposition of the witness John T. Taylor, Esq., was taken, subscribed, and sworn to at the city of Mobile, on the thirteenth day of April, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 13th April, 1857. GEO. E. HOLT, *Clerk.*

No. 23. *Interrogatories to be exhibited to James Riley, Cade M. Godbold, W. P. Hammond, Ovid W. Savage, J. B. Calef, and John C. McGuire, Witnesses at the Instance of the Defendants in said Cause.*

1. Do you know the parties?

2. Do you know the property bounded south by St. Louis Street, west by Royal Street, north by St. Anthony Street, and east by the Mobile River? If yea, state if you know of any improvements having been made on said property in 1852. If so, state by whom they were made; were they put up by the complainant or defendants, or either of them?

3. Did you or the members of your firm furnish any materials of any kind or description towards the said buildings or improvements? If yea, state who spoke to you in relation to the same, who made the contract or purchase, what articles or materials were furnished or sold, who paid the bills or accounts, and how much was paid.

4. Were the said purchases made by the plaintiff or defendants, or either of them? Did you see the plaintiff and defendants William F. Cleveland and James Campbell together purchasing or ordering articles? Did they act together in putting up the buildings? Did you see them both there superintending the buildings and the property, or in making purchases for the erection of the buildings? State fully.

5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this suit, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

CHANDLER, SMITH & HERNDON,
Defendants' Solicitors.

Filed 26th December, 1856. GEO. E. HOLT, *Clerk.*

No. 23. *Deposition of Ovid W. Savage.*

The said witness, in answer to the said interrogatories, says on oath:—

1. I know the parties.

2. I know the property described, and of improvements having been made on it in 1852. So far as my information extends, said improvements were made by James Campbell and Wm. F. Cleveland. I did not know until a year or two afterwards that complainant was at all concerned in the matter. I then learned he was interested, in consequence of having been referred to him by Campbell and Cleveland for payment of the balance of my account; and on application to him for payment thereof, he informed me that he was interested in the property and buildings, and paid me my balance.

3. The firm of Savage & Calef, of which I was then a member, furnished lime and cement to the value of $\$1,855\frac{55}{100}$ towards the buildings. These articles were furnished by us in different quantities and at different times, from 14th April, 1852, to 11th December, 1852, inclusive. The purchases were made of us by Messrs. Campbell and Cleveland, chiefly by Mr. Campbell, whom I knew most in the matter. They were both present together sometimes, and sometimes one and then the other. The accounts, amounting to the sum above stated, with, to the best of my knowledge, the exception of $37, were paid by Messrs. Campbell and Cleveland. This balance of $37 was paid about two years after by Mr. Collins, as stated in my answer to the last.

4. Have already said they were made by Campbell and Cleveland. Never saw the plaintiff with these gentlemen purchasing articles. Mr. Collins, as above stated, told me afterwards that he was interested in the buildings; and, I suppose, in consequence of it he acted with the defendants in their erection. Saw Messrs. Campbell and Cleveland frequently about the property, apparently directing the work, &c. Never saw Collins, to know him, until a year or two afterwards; and, as before said, the purchases made of our firm were made by Campbell and Cleveland.

5. I have stated about all I know in relation to the matters at issue in this suit.

O. W. SAVAGE.

The foregoing deposition of Ovid W. Savage was taken, subscribed, and sworn to at the city of Mobile, on the 14th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

No. 23. *Deposition of J. B. Calef.*

The said witness, in answer to the said interrogatories, says on oath:—

1. I know the parties.

2. I know the property inquired of, and also know of improvements having been put on it in 1852. To the best of my knowledge, said

improvements were put up by Campbell and Cleveland, two of the defendants. I did not know that Collins was concerned in putting up the buildings; but during their erection he (Collins) paid me money on accounts made by Campbell and Cleveland with the firm of Savage & Calef. I made a portion of the collections for our firm, and on application to Campbell and Cleveland for money, they referred me to Mr. Collins, who made me payments.

3. The firm of Savage & Calef, of which I was then a member, furnished lime and cement to the amount of $1,855 55 towards the erection of said building at various times, from April to December, 1,852. Campbell & Cleveland made the contracts with us for the purchase of these materials; only a portion of the bills were collected by me, and for payment of these, I applied to Messrs. Campbell & Cleveland, who referred me to Mr. Collins, and he (Collins) paid me the money. The whole of the bills amounted to about $1,855 55, and, of this amount, I think about one thousand dollars was collected by me, being paid by Mr. Collins.

4. The purchases were all made by Campbell and Cleveland; I only knew Collins in the matter as the man who paid the bills; I did not know he was interested in the building, but thought he was in the employ of Campbell and Cleveland. Have seen both Campbell and Cleveland making purchases. Never saw Collins with them. Have seen Collins, Campbell, and Cleveland together at the building; but Campbell & Cleveland, as before said, seemed to be the principal men in the direction, &c., of the work.

5. I have stated all I know of the matters in issue in this cause.

J. B. CALEF.

The foregoing deposition of J. B. Calef was taken, subscribed and sworn to at the city of Mobile, on the 14th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

No. 23. *Deposition of J. C. McGwyre.*

The said witness, in answer to the interrogatories aforesaid, says, on oath: —

1. I know the parties to the suit.

2. I know the property inquired of. I also know of improvements having been made thereon in 1852; said improvements were put up by the parties in this suit, as I understood, under the firm name of Collins & Cleveland, all the parties, plaintiff and defendant, being interested therein; such was my understanding of the matter.

3. I made the iron galleries and awning-frames for the buildings. The first time I was spoken to about the work I did, Collins & Cleveland came to me together, and asked me for what I would do the work for; I informed them as to the price, and afterwards Collins came alone, and said they accepted my terms, and directed me to go on with the work. The work I did amounted to $475, or thereabout, and my bill for the same was paid by Collins.

4. The work I did, as I have said before, was contracted for by Collins; he and Cleveland came together and inquired about terms &c., and afterwards the contract was closed by Collins. I saw Collins & Cleveland together, ordering the work I did. I was not spoken to about it by Campbell or Thompson. It was my understanding that all these parties were interested in making the improvements, and my understanding, though whence derived I do not now remember, that the work I did was to be charged to Collins & Cleveland as a firm. I was very little about the buildings whilst they were going up, and cannot say that I saw any of the parties to this suit on the spot directing or superintending the work. Cannot say that they acted together, except so far as in the instance above spoken of, when Collins and Cleveland came together to speak about the work I did.

5. My impression was, that Collins and Cleveland acted together in making the improvements on behalf of themselves and the other parties concerned. I cannot *I cannot* give however more fully than I have already, the particular acts and words which gave rise, in my mind, to this impression. I have stated all I know in relation to the subject matter of this suit. J. C. McGWYRE.

The foregoing deposition of J. C. McGwyre was taken, subscribed, and sworn to at the city of Mobile, on the 14th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said sause.

No. 23. *Deposition of W. P. Hammond.*

The said witness in answer to the interrogatories aforesaid says, on oath: —

1. I know the parties to this suit.

2. I know the property inquired of, and also know of improvements being made thereon in 1852. I know that two of the defendants in this cause, Cleveland & Campbell, were interested in getting up these improvements, and these were the parties I dealt with in furnishing materials.

3. Mr. Cluis and myself, proprietors of the Mobile Steam Brick-Works, made a verbal contract with Messrs. Campbell and Cleveland for the furnishing of a certain quanity of brick in the improvements above spoken of. In pursuance of said verbal contract, we furnished between the 15th May and 28th October, of 1852, 813,650 brick at 5½ dollars per thousand, making $4475 07; and also 208,100 brick at $12 per thousand, making $2497 20; in all, $5972 $\frac{27}{100}$. The bill for these brick was made out in the name of Campbell and Cleveland, and paid by Mr. Cleveland, I believe.

4. They were made by two of the defendants Messrs. Campbell and Cleveland. In our transactions I only knew Messrs. Campbell & Cleveland. They made the purchase of the bricks from us together. I have seen them together about the buildings. I did not know Collins in the matter at all, nor did I know Thompson in it.

5. I have stated all I know in relation to this cause. Our bill was made out in the name of Campbell and Cleveland, whether it was paid by them, or either of them in person, I cannot say; it was collected by our clerk, Mr. Evans, and receipted by him for us.

W. P. HAMMOND.

The foregoing deposition of W. P. Hammond was taken, subscribed, sworn to, at the city of Mobile, on the 15th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in said cause.

No. 23. *Deposition of James Riley.*

The said witness in answer to the interrogatories aforesaid says, on oath: —

1. I know the parties.

2. I know the property inquired of, and also know that in 1852, a block of brick buildings were erected on said property. I know that the complainant and one of the defendants, to wit, Wm. F. Cleveland were interested in putting up said buildings. I dealt with these two in the work that I did in said improvements. Mr. James Campbell told me that he was also interested, but I know nothing of my own knowledge of Thompson and Campbell being interested.

3. I furnished all the sand that was required for making the mortar used in the erection of said buildings, and also did a part of the filling up with dirt under the floors of the lower stories. I was spoken to in relation I did, and the materials I furnished by Mr. William F. Cleveland. I was paid in part by Mr. Cleveland, and in part also by Mr. Collins. I cannot now remember, without reference to my books, how much was paid me, though it was over $500.

4. I was spoken to in relation to the materials I furnished by William F. Cleveland. I do not remember to have seen the plaintiff and defendants together purchasing the materials. It was my impression that the plaintiff and defendants acted together in putting up said buildings; Mr. Collins and Mr. Cleveland had an office together. I think I was introduced to Mr. Collins by Mr. Cleveland, and Mr. Collins paid me a portion of my bill. Mr. Cleveland appeared to be the managing man in superintending the erection of the buildings, obtaining materials, &c. I cannot speak as to the connection between the parties, plaintiff and defendants, and as to the respective interest in said improvements, except from report. It was my impression they were all interested.

5. All I know in relation to this matter goes only to the extent of my own contract for the furnishing the sand and filling up. I now remember also that I carted up certain ballast for filling up the streets on either side of said buildings. This ballast was furnished by Messrs. Campbell and Cleveland, and for hauling a portion of it I was paid through Mr. Douglas Campbell, the son of Mr. James Campbell. Previous to being employed to furnish materials for the

buildings. I was employed by Messrs. Campbell and Cleveland to fill up the bulkhead of the street and wharf in front of said property, and in payment I received the note of James Campbell for $850, which was paid in bank at maturity.

This is about all I know in relation to the matter.

JAMES RILEY.

The foregoing deposition of James Riley was taken, subscribed, and sworn to, at the city of Mobile, on the 19th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

No. 23. *Deposition of Cade M. Godbold.*

The said witness in answer to the interrogatories aforesaid says on oath:—

1. I know the parties.

2. I know the property described in this interrogatory, and also know that improvements were made on it in 1852. The only parties that I know of my own knowledge to be interested in putting up said improvements were the complainant and William F. Cleveland.

3. I did furnish between two hundred thousand and three hundred thousand feet of lumber towards the said improvements. I was spoken to in relation to furnishing said lumber by Wm. F. Cleveland, and contracted with him to furnish it. I think I had conversations with complainant about furnishing the said lumber also. My recollection is, that I also held conversations with James Campbell upon the same subject. My recollection is, that nearly three thousand dollars was paid me for said lumber. William F. Cleveland paid me a part of this amount, and Collins paid the remainder, and with him (Collins) I made a final settlement of the whole matter.

4. As to the persons by whom the purchase of the lumber from me was made, I would refer to my answer to the last interrogatory. I was spoken to by the three parties herein named at different times about the lumber, though I do not remember having had a conference with them together. Frequently saw Collins and Cleveland together about the buildings during their erection, and they appeared to be superintending and directing the work jointly.

5. I believe that I have stated all that I know as to the matters in issue in this suit.

C. M. GODBOLD.

The foregoing deposition of Cade M. Godbold was taken, subscribed, and sworn to, at the city of Mobile, on the 7th day of February, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause. And the said depositions of O. W. Savage, J. B. Calef, J. C. McGwyre, W. P. Hammond, James Riley, and Cade M. Godbold, were filed in my office 7th April, 1857.

Attest: GEO. E. HOLT, *Clerk*.

No. 24. *Interrogatories to be exhibited to Ovid Mazange, John Bowen, and B. S. Skaats, witnesses at the instance of the defendants in the said cause.*

1. Do you know the parties?

2. Did you or either of you sell or furnish materials of any kind or description to the plaintiff or the defendants or either of them to aid in the erection of the buildings situate on the east side of Commerce Street, between St. Louis and St. Anthony, and in the year or years 1852 and 1853? If so, state who applied to you for the articles or materials so sold, to whom were they furnished, and at whose instance, and by whose order. State the articles or materials so furnished, and who paid and settled with you for the same.

3. Do you know, or can you state any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Sol'rs for Defendants.

Filed December 1st, 1856. GEO. E. HOLT, *Clerk.*

No. 24. *Deposition of B. S. Skaates.*

The said witness in answer to the foregoing interrogatories answers and says on oath:—

1. I know the parties.

2. I did sell to Mr. James Campbell materials to be used in the erection of the buildings inquired of, consisting of cast iron columns, and a great number of bolts. I was applied to by Mr. Campbell and Mr. Cleveland, the former seeming to have most to do with the matter. I did not at this time know complainant in the transactions, though I had heard of him as being in a business connection of some kind with the parties named. I afterwards presented the bill for the materials to Mr. Cleveland, who either referred me to Mr. Collins or accompanied me to his office, I do not now remember which, and Collins, after a conversation with Mr. Cleveland, paid me the amount of the bill, and took a receipt I think in the name of Collins, Cleveland & Co.

3. I have stated in my answer to the two preceding questions about all I know which will be of benefit to either of the parties to this suit.

B. S. SKAATES.

The foregoing deposition of B. S. Skaates was taken, subscribed, and sworn to, at the city of Mobile, on the 17th day of December, 1856, before Richard B. Owen, Esq., a commissioner to take testimony in said cause.

No. 24. *Deposition of John Bowen.*

The said witness in answer to the interrogatories aforesaid, says on oath:—

1. I know the defendants to this suit, and know who the plaintiff is, though I am not personally acquainted with him.

2. I was applied to by J. P. Pond for the doors and sash to be used in the buildings inquired of, but being unwilling to furnish them to him without security, Mr. Wm. F. Cleveland saw me, and said that he would be responsible to me for the payment of my account for them. I accordingly furnished said articles and delivered them to Mr. Pond, whom I understood to be the contractor for the erection of the buildings, and who informed me that he was putting up the buildings for Collins and Cleveland. I was absent when my bill was paid, and cannot say positively by whom my bill was paid, but am of the impression it was paid by Mr. Cleveland.

3. I have answered fully as to all I know of the matter.

JOHN BOWEN.

The foregoing deposition of John Bowen was taken, subscribed and sworn to at the city of Mobile, on the 17th day of December, 1856, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

No. 24. *Deposition of Ovid Mazange.*

The said witness in answer to the foregoing interrogatories says on oath:—

1. I know the parties in this cause.

2. I find by reference to our books that my firm sold goods to Collins and Cleveland, and Collins & Co. (which firms we looked upon as being composed of the same parties), at various times during the years 1852 and 1853, to the extent of about $1000. Of this amount about $100 worth was sold to Collins and Cleveland, and to Collins & Co., about $900 worth. I believe the majority of these goods were materials used in the erection of the buildings herein described. The goods were applied for by various persons, sometimes by Cleveland, sometimes by Collins, and at other times by J. P. Pond, and other authorized parties. Goods were also furnished upon orders of proper parties. The amount of the account of Collins and Cleveland was transferred to Collins & Co., and the whole account was settled as follows, by a note signed by Eckford & Weaver, in favor of Collins and Cleveland for $400, and by cash for the balance.

3. In answer to this interrogatory I can only say, that to the best of my knowledge and belief the parties to this suit, complainants and defendants were jointly interested, and acted in concert in the erection of the buildings described in the last interrogatory.

O. MAZANGE.

The foregoing deposition of Ovid Mazange was taken, subscribed and sworn to at the city of Mobile, on the 24th day of December, 1856, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

No. 24. *Interrogatories to be exhibited to Franklin L. Owen, a witness on behalf of the defendants in the said cause.*

1. Do you know the parties to this cause?
2. What office do you hold, and how long have you held it?
3. Did the plaintiff and the defendants, or either of them, and state which, keep their accounts or deposit moneys in the Southern Bank of Alabama, during the years 1852 and 1853? If yea; state in whose names the account was kept, on whose check was the money paid out; and state how much money was paid out on such checks.
4. Was not a *special deposit* of notes or bills receivable made in said bank by the plaintiff and defendants, or by the plaintiff, or Wm. F. Cleveland, or one of them? If yea; state when it was made, and when and by whom was it withdrawn.
5. Was said package withdrawn with the knowledge or consent of the defendants? Have you reason to believe it was withdrawn without the knowledge or consent of William F. Cleveland or the other defendants? If so, state the reasons that induce you so to believe.
6. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, state the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Solicitors for Defendants.

Filed December 3d, 1856. GEO. E. HOLT, *Clerk.*

No. 24. *Deposition of Franklin L. Owen.*

See objections of compl't, page 1480.

The said witness in answer to the foregoing interrogatories says on oath:—

1. I know all the parties to this suit.
2. I am teller of the Southern Bank of Alabama, and have been for six years.
3d. Collins and William F. Cleveland made a deposit in said bank of $34,000, on 25th March, 1852, and $4,984 $\frac{45}{100}$ in April, keeping a running account, depositing and checking to 23d June, 1853, when the account was closed. Collins and Cleveland checked for the money.
4. There was a sealed package said to contain valuable papers deposited by Collins and Cleveland, which was called for by both, and finally, I think, withdrawn by Collins. I never knew what were its contents.
5. An account was opened jointly, as stated above, by Collins and Cleveland, and the package was entered in their book; it was handed to either, and as above stated finally given to Collins, and erased from the book.
6. I know nothing more material to the issue in this cause.

F. L. OWEN.

The foregoing deposition of Franklin L. Owen was taken, subscribed and sworn to at the city of Mobile, on the 17th day of December, 1856, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

No. 24. *Interrogatories to be exhibited to Duke W. Goodman, a witness at the instance of the defendants in the said cause.*

1. Do you know the parties?

2. Are you acquainted with what is called "the Collins property" in Mobile? If yea, state if you know of the plaintiff and defendants or either of them controlling, managing and superintending said property, of building on it, and improving it, of renting out any part of it. If yea, state what they did, if they acted in concert and harmoniously.

3. Did you ever rent a wharf from them, or either of them? If so, state where, and for what years, from whom you rented the wharf or wharves, to whom you paid the money, or gave your notes. Was this done with the knowledge and consent of the plaintiff? State how much you have paid for the rent of the property.

4. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Solicitors for Defendants.

Filed 3d December, 1856. GEO. E. HOLT, *Clerk.*

See compl't's objections page 1480.

No. 24. *Deposition of Duke W. Goodman.*

The said witness, in answer to the foregoing interrogatories, says on oath:—

1. I know the parties.

2. I am acquainted what is known as "the Collins property," in Mobile. William F. Cleveland and Collins, as I understood, had the management of said property, in renting, building, and repairs. Cleveland appeared as the managing man, and he and Collins, as far as I could understand, acted in concert and harmony. I have frequently seen also Mr. James Campbell around the buildings giving orders, whilst said buildings were being erected.

3. Fettyplace, Goodman & Co., of which firm I am a member, rented a wharf from them, from the 1st November, 1851, to 1st November, 1855. The first year's rent was $5,000; the balance of the time, which was three years, we paid $7,000 a year. The first year's rent we paid to Mr. James Campbell, as is shown in the annexed account, marked Exhibit A. The remaining rent for said years was paid to Cleveland and Collins in cash and notes, at different times, as will appear from the copies of receipts and accounts

hereto annexed, marked Exhibit B and Exhibit C; the said receipts specify the notes as given; the initials at the left of the receipts show the person to whom the notes were given. Each of the parties receipted for the same without any dissatisfaction. The two last years, Collins claimed the rents, and appeared dissatisfied. From 1st November, 1855, to 1st November, 1856, the rent was five thousand dollars, two-thirds of which we paid to William F. Cleveland, for himself, James Campbell, and Drury Thompson; the other one-third we paid to Sidney E. Collins.

4. I know nothing further than I have already stated.

D. W. GOODMAN.

Exhibits to the Testimony of D. W. Goodman.

Exhibit A.

JAMES CAMPBELL & Co.,
In ac't with FETTYPLACE, GOODMAN & Co.

1851.		Dr.	
Aug't 23d.	To bills payable, our note due 10–13 Jan'y, '52 on ac't	$1,200	00
Oct. 31.	" bills payable, note due 10–13 Feb'y, '52, on ac't	1,200	00
1852.			
Jan. 6.	" bills payable, note due 6–9 March, '52, on ac't	1,200	00
31.	" cash paid for plank and spikes for wharf	1,199	50
Feb'y 17.	" note due 17–20 April, on ac't	1,200	00
28.	" cash paid him (8 Dec.)	1,000	00
	" do. S. E. Collins' note	600	00
March 9.	" bills payable, note due 8–11 May, '52, balance rent	1,373	70
31.	" cash am't wh'f bill	56	20
		$9,029	40

1851.		Cr.	
Nov.	By wharves. Rent "Indian" wharf from 1 Nov., '51, 1 year	$1,500	00
	" Planter's wharf, do.	2,500	00
	" Collins' wharf, do.	5,000	00
	" repairs, overcharge on lumber	29	40
		$9,029	40

Exhibit B.

Copy.

Mobile, 18 Sept., 1852. Received from Fettyplace, Goodman & Co., their note for fifteen hundred dollars, due 5–8 Feb'y next, on ac't rent wharf. (S'n'd) COLLINS & CLEVELAND.
By W. F. C.

Rec'd 5 Oct., 1852, from F. G. & Co., their note for three hundred dollars, on ac't rent "Collins wharf."
(Signed) COLLINS & CLEVELAND.
By W. F. C.

Rec'd 21st Oct., 1852, from F. G. & Co., their note for four hundred and sixty-four and $\frac{62}{100}$ dollars, in favor of B. S. Skates & Co., on ac't wharf rent. (Signed) COLLINS & CLEVELAND.
By F. W. C.

Mobile, 1st Nov., 1852. Rec'd from F. G. & Co. their note for fifteen hundred dollars, due on the 20 Jan'y, 1853, on ac't wharf rent. (Sig'd) COLLINS & CLEVELAND.
By W. F. C.

Rec'd, Mobile, 23 Nov., 1852, from F. G. & Co., their note for seven hundred and seventy dollars, on ac't wharf rent.
By W. F. C. (S'g'd) COLLINS & CLEVELAND.

Mobile, 16 Dec., 1852. Rec'd from F. G. & Co. three hundred and fifty-seven and $\frac{56}{100}$ dollars on note on ac't wharf rent.
By W. F. C. (S'g'd) COLLINS & CLEVELAND.

Mobile, 1st Feb'y, 1853. Rec'd from F. G. & Co. one thousand dollars on ac't wharf rent.
By W. F. C. (S'g'd) COLLINS & CLEVELAND.

Rec'd, 27th April, 1853, from F. G. & Co., their note for thirty-one hundred and seven and $\frac{82}{100}$ dollars, on ac't rent of "Collins' wharf." (S'g'd) COLLINS & CLEVELAND.
By SID. E. COLLINS.

1,107 82 old ac't.
2,000 new ac't.

$3,107 82

Mobile, 14th Dec. 1853.

Rec'd from F. G. & Co., their two notes for two thousand dollars, each due 10 M'ch, '54, and 10 May, '54, on ac't rents.
$4,000. S. E. C. (S'g'd) SID. E. COLLINS.

Mobile, 10 June, 1854.

Rec'd from F. G. & Co., their note due 10–13 Nov. 1854, for one thousand dollars, in full, for rent wharves to 1st Nov. 1854.
S. E. C. (S'g'd) SID. E. COLLINS.

Rec'd, Mobile, 24 Aug't, 1854, of F. G. & Co., their note for five hundred and fifty dollars, four months after date, dated Aug't 22d, 1854, on ac't wharf rent.
By W. F. C. (S'g'd) COLLINS & CLEVELAND.

Rec'd, Mobile, 17 Feb'y, '55, from Fettyplace, Goodman & Co., their note for one thousand dollars, due 18–21 April, '55.
$1,000. S. E. C. (S'g'd) SID. E. COLLINS.

Exhibit C.

Messrs. COLLINS & CLEVELAND, DR.

To FETTYPLACE, GOODMAN & Co.

1852.			
Sept. 18.	To bills payable on note, fav'r Cleveland & Collins, due 5–18 Feb'y, '53, on ac't rent "Collins' wharf"	$1,500	00
Oct. 5.	To bills payable, note due 10–13 Jan'y, '53, favor of James Riley	300	00
21.	To bills payable for note in favor of B. S. Skates & Co., due 1–4 March, '53 .	464	62
Nov. 1.	To bills payable note due 20–23 Jan'y, '53, favor Collins & Cleveland	1,500	00
23.	To bills payable note due 10–13 M'ch, '53, favor of Collins & Co.	770	00
Dec. 16.	To bills payable note due 14–17 Feb'y, '53, favor of Jarvis Turner . . .	357	56
1853.			
Feb'y 1.	To bills payable note due 2–5 April, '53, favor of Kirkbride & Ellis . .	1,000	00
April 26.	To bills payable note due 10–13 Jan'y, '54, fav. of Collins & Co. $3,107 82		
	Bal. rent to 1 Nov. '53 . . .	1,107	82
	Included in above note on ac't rent next year	2,000	00
Dec. 14.	To bills payable 2 notes due 10–13 March and 10–13 May, '54, favor S. E. Collins .	4,000	00
1854.			
June 10.	To 1 do. due 10–13 Nov. '54, bal. rent to 1 Nov. '54	1,000	00
"	To bills payable note due 22–25 Dec., fav. W. F. Cleveland	550	00
Nov. 30.	To cash, am't p'd R. Greig for repairs .	504	09
1855.			
Feb'y 17.	To bills payable note due 18–21 April, fav. S. E. Collins	1,000	00
April 24.	To bills payable note due 23–26 July, fav. W. F. Cleveland	1,000	00
	Due 24–27 Dec., do. for bal. $\frac{1}{3}$ interest	615	30
Nov. 1.	To balance due S. E. Collins, rent to 1st Nov. 1855	3,330	61
		$21,000	00
1855.			
Nov. 1.	To balance bro't down, due S. E. Collins for $\frac{2}{3}$ interest	$3,330	61

The foregoing deposition of Duke W. Goodman was taken, subscribed, and sworn to on the 19th day of December, 1856, at the city of Mobile, before Richard B. Owen, Esqr., a commissioner appointed to take testimony in the said cause. And the said depositions of B. S. Skaates, John Bowen, O. Mazange, Franklin L. Owen and Duke W. Goodman were filed in my office on the 7th day of April, 1857. Attest: GEO. E. HOLT, *Clerk.*

No. 24. *Objections filed by the complainant to interrogatories to Franklin L. Owen and Duke W. Goodman, to wit:*

He objects to the fifth direct interrogatory to Franklin L. Owen, as leading, and to so much of the second interrogatory to Duke Goodman as is in these words, to wit: "State if you know of the plaintiff and defendants, or either of them controlling, managing and superintending said property of working on it, and improving it, of renting out any part of it, and if they acted in concert and harmoniously?" as leading.

K. B. SEWALL, *of Counsel for Compl't.*

Filed 11th December, 1856. GEO. E. HOLT, *Clerk.*

No. 25. *Interrogatories to be exhibited to William O. Pond, J. P. Pond, and Jonathan Kirkbride, witnesses at the instance of the defendants in said cause.*

1. Are you acquainted with the parties?

2. What is your business and occupation? and state if you were employed in the year 1852, to put up some buildings on the east side of Commerce Street between St. Louis and St. Anthony Streets? If yea, state who consulted in relation to said buildings? with whom did you make the contract, and who claimed to be interested in the buildings and lots?

3. If you have the contract or specifications for the buildings, annex them to your answers, and state if they were approved and sanctioned by the plaintiff and the defendants, and which of them.

4. While the buildings were being erected, was the plaintiff frequently there? Did he seem to be interested in the progress of the work, and did he or not make suggestions in relation to the same? If so, state in what way he manifested his interest, and what he said and did.

5. Did you see, while the contract was in progress or after it was made, the plaintiff and William F. Cleveland together, consulting in relation to the buildings and the lots? Did they or not act in concert, and were they not frequently together consulting in relation to the property? State all you know that will show that the plaintiff and the defendants, or any one of them, acted together in putting up said building, or in superintending their construction.

6. Do you know, or can you set forth any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of

this your examination, or the matters in question in this cause? If yea, state the same fully and at large in your answer.

CHANDLER, SMITH and HERNDON,
Solicitors for Defendants.

Filed December 1st, 1856. GEO. E. HOLT, *Clerk.*

Objections, etc. and cross-interrogatories filed to said witnesses by the complainant.

The complainant objects to the 4th and 5th direct interrogatories to the Ponds and Kirkbride as leading, and without waiving said objections, propounds to the said witnesses the following cross-interrogatories:—

1. If you have annexed any contract to your answer, please state in whose handwriting the same and any part of it is, and what persons subscribed the signatures to the same.

2. Was Mr. Collins not absent when said contract was executed?

3. Whom did you understand to be the owner of the land on which the improvements were made? Were you not informed it belonged to Mr. Collins? that he had recovered it from the heirs of Kennedy?

K. B. SEWALL, *of Counsel for Compl't.*

Filed 11th December, 1856. GEO. E. HOLT, *Clerk.*

No. 25. *Deposition of J. P. Pond.*

The said witness in answer to the direct and cross-interrogatories aforesaid, says, on oath:—

1. I know the parties.

2. I was, until about a year since, a builder or contractor for putting up buildings; am now an architect. On the 10th day of March, 1852, I signed a contract with Sidney E. Collins, Wm. F. Cleveland & Co., to put up six stores on the east side of Commerce Street, between St. Louis and St. Anthony Streets. I was consulted with by Mr. Collins and Mr. Cleveland in relation to said buildings. Mr. Cleveland was the only one present when I signed the contract—Mr. Collins being then absent from Mobile, but on his (Collins's) return, he acknowledged and consented to said contract, and afterwards paid me money on it. Cleveland and Collins claimed interest in the buildings and lots, and also James Campbell intimated to me that he was interested. Don't remember to have heard Mr. Thompson say anything about it.

3. I have annexed hereto a copy of the contract entered into by me, as above stated, marked Exhibit A. The said contract was approved and sanctioned by the complainant and William F. Cleveland, but I had very little with Campbell about it, and nothing at all with Thompson. The specifications are at this time mislaid, and I cannot just now without search lay my hand upon them.

4. Collins was frequently on the spot while the buildings were being erected, he was there nearly every day while the work was progressing, and sometimes all day. He seemed to take a great deal of

interest in the work, and made suggestions as to alterations, &c.; the interest he took was of the kind the owner of a piece of property would have taken in improving it, and his words were of the same character.

5. I frequently saw plaintiff and Cleveland together consulting in relation to the buildings whilst the contract was being carried out. They acted in concert, and were frequently together consulting about the property. They appeared to be in perfect harmony in their views about the construction of the buildings, and I consulted with Collins and Cleveland both frequently as to the work, consulted with Collins the most, as he had once been a mechanic himself. Their acts and words on these occasions showed that they acted in perfect harmony. As far as the construction of the buildings was concerned, Mr. Collins exercised a greater superintendence than Cleveland. The latter attended principally to the getting of the lumber and materials.

6. I cannot answer more fully than I have. In the contract with me the whole course of the acts and words of Collins convinced me that he was equally concerned and interested in the buildings with any other parties who had a claim thereto. He paid me money, drew checks, took receipts, made suggestions and exercised a general superintendence.

Answers of J. P. Pond to cross-interrogatories.

1. The contract I have annexed is a copy of the original; the original was in the handwriting of William D. Primrose, Esq., except the signatures, which are in the handwriting of Cleveland for himself and Collins, and in mine and my sons, William O. Pond. The copy annexed was made by me from the original, and is true and exact in every particular.

2. Mr. Collins was absent when said contract was executed, but he fully sanctioned and ratified the same on his return.

3. I understood Sidney E. Collins to be the owner of the land, and was so informed both by general rumor and by Collins, and was informed that he had recovered it from the heirs of Kennedy.

J. P. POND.

Exhibit A.

STATE OF ALABAMA,
Mobile County.

This contract, made this tenth day of March, 1852, by and between Wm. F. Cleveland and Sidney E. Collins of the first part, and J. P. Pond and Wm. O. Pond of the second part, witnesseth, that the parties of the second part covenant, agree and bind themselves that they will do all the carpenter's work necessary and proper to be done on the building to be erected for the parties of the first part, and to be completed, built and finished in a substantial, workmanlike manner, to be finished and completed, and the keys to be delivered to the

parties of the first part, by the first (1st) day of October next, 1852: That is to say, six stores, situated in the city of Mobile, between Commerce and Front Streets, St. Anthony and St. Francis Streets. The work to be neatly, skilfully and substantially done, according to a plan and specifications hereto attached, marked A, and made a part of this contract. In consideration of the said work being in the manner aforesaid done *by* the parties of the first part, agree to pay them in the following manner as the work progresses: When this contract is executed, seven hundred dollars; when the first story door frames are set, six hundred dollars; when the first floor joists are on, eight hundred dollars; when the second floor joists are on, seven hundred dollars; when the third floor joists are on, six hundred dollars; when the roof is raised, five hundred dollars; when the roof is sheathed and upper floor laid, five hundred dollars; when the floors are laid, nine hundred dollars; when the windows are all in, the doors hung, and all and every part, and parcel, and piece of the work is done, finished and completed as aforesaid, and the keys of the whole six stores all delivered, then the sum of three thousand and seventy dollars to be paid, which will be in full for all claims *and claims* and demands of the parties of the second part, and will make the sum of eight thousand and three hundred and seventy dollars to be paid by the parties of the first part, to the party of the second part. As witness our hands and seals on the day and year aforesaid.

In presence of, COLLINS & CLEVELAND, [SEAL.]
By WM. F. CLEVELAND.
J. P. POND, [SEAL.]
WM. O. POND, [SEAL.]

The foregoing deposition of J. P. Pond was taken, subscribed and sworn to, at the city of Mobile, on the 16th day of December, 1856, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

No. 25. *Deposition of William O. Pond.*

The said witness in answer to the direct and cross-interrogatories, says on oath:—

1. I know the complainant and one of the defendants (Mr. Cleveland) personally, know the other defendants by reputation.

2. I am a builder, and was employed in 1852 to put up the building herein described. Was consulted in relation to them by Mr. Collins and Mr. Cleveland. The contract was made by Mr. Cleveland, who signed for Collins and himself. Mr. Cleveland and Mr. Collins I know claimed to be interested in the buildings, but I never heard anything in this connection from the other defendants.

3. I have not myself a copy of the contract and specifications; they are in the possession of my father, in connection with whom I took the contract, and I presume he has annexed the same to his deposition. The contract was fully sanctioned and approved by Mr.

Collins, and no objection was ever made by any of the parties until about the close of the work, when my father and I had some disagreement with Mr. Cleveland in the settlement, about some extra work. When I say it was sanctioned by Collins, I mean that he made no objection to it, and seemed by his acts and words to approve it.

4. Complainant was frequently there during the erection of the buildings. I myself had little or nothing to say with him, or any of the parties about the work. During the progress of the work, my father and I received money both from Mr. Collins and Mr. Cleveland.

5. I have seen Mr. Collins and Mr. Cleveland together at the buildings, during their erection, and in conversation; but I did not hear what was said, nor the subject of their conversation. In carrying out the contract, it fell to my part to oversee the hands; my father advised with the other parties to the contract, and is, in consequence, more competent to answer in this connection than I am. I know that the work was superintended both by Mr. Collins and Mr. Cleveland, the latter taking a leading part therein.

6. I have stated as fully as I am informed in relation to this matter.

To the Cross-Interrogatories.

1. I have annexed no contract; the one I signed was signed by William F. Cleveland for himself and Collins, and by my father and myself. I do not know in whose handwriting the body of it was.

2. Collins was absent when said contract was executed.

3. I understood Mr. Collins to be the owner of the land. I was so informed by my father, and also heard it talked of as a matter of rumor. I heard that he had recovered it in a law suit, but I forget now from whom it was he had so recovered it.

WM. O. POND.

The foregoing deposition of William O. Pond was taken, subscribed, and sworn to at the city of Mobile, on the 17th day of December, 1856, before Richard B. Owen, Esq., a commissioner appointed to take depositions in the said cause.

No. 25. *Deposition of Jonathan Kirkbride.*

The said witness, in answer to the direct and cross-interrogatories aforesaid, says on oath:—

1. I am acquainted with the parties.

2. My business and occupation is that of a mason, or rather a contractor, for doing the brick-work and plastering of buildings. I was employed in the year 1852 to put up the buildings inquired of; that is, to do the brick-work and plastering, &c. I was consulted in relation to said buildings by Sidney E. Collins and Wm. F. Cleveland, and I made the contract with Wm. F. Cleveland, who signed for himself and Collins. Collins and Cleveland claimed to be in-

terested in the buildings, and, towards the close, James Campbell exercised some control, suggesting alterations in some of the work which had been done. I heard nothing from either of the above-named parties in reference to the ground on which the buildings were put.

3. I have a copy of the contract, and annex said copy hereto marked (Exhibit B.) It is a true and correct copy of the original in every respect. I also annex a copy of specifications which I believe to be identical with those I worked by; this copy of specifications I have marked (Exhibit C.)

The contract was made between myself for Ellis & Kirkbride, and William F. Cleveland for Collins & Cleveland. Collins was afterwards frequently on the spot during the erection of the buildings, and I never heard him express any objection to the contract. Never heard the other two defendants say anything about it, further than is above stated, about Campbell.

4. Complainant was frequently there during the progress of the work, and made suggestions in reference thereto. He manifested much interest, as much so as a man who owned, or was interested in property would do. Cannot remember what he said and did. His words and acts, however, tended to show he was interested in the contract, and work.

5. I saw frequently complainant and Cleveland together, consulting in relation to the building. I should think they acted in concert. They, that is, Collins & Cleveland, had frequent consultations about the buildings, each being on the spot, frequently calling each other's attention to things going on, &c., and superintending the work.

6. I think I have answered fully as to all the matters within my information as to this suit.

Answers to Cross-Interrogatories.

The original of the contract, a copy of which I have annexed, was in the handwriting of Wm. D. Primrose, Esq. The copy hereto annexed, marked Exhibit B, is in the handwriting of complainant. The original was signed by Cleveland for Collins & Cleveland, and by myself for Ellis & Kirkbride.

2. Mr. Collins was absent when said contract was executed; that is, he was not present at the signing of the contract. I do not know whether he was absent from the city or not.

3. I was informed that the land on which the improvements were made, belonged to Mr. Collins, and that he had recovered it from the heirs of Kennedy; I mean I was so informed from general rumor and report.

J. KIRKBRIDE.

B.

THE STATE OF ALABAMA,
Mobile County.

This contract, made and entered into this 22d day of March,

1852, the basis of which is shown by this proposition of Elias & Kirkbride, of this date, and hereunto attached, marked (A); and reference also being made to an exhibit and specification marked (A) and attached to the contract made and executed on the tenth day of March, 1852, between Wm. F. Cleveland and Sidney E. Collins, of the first part, and J. P. Pond and Wm. O. Pond, of the second part, which is also made a part of this contract. Now, the said Ellis and Kirkbride covenants and agrees, as shown by their proposition aforesaid, to do all the brick work, &c. &c. &c., of six stores which the parties of the first part intend *making* between Commerce and Front Street, St. Louis and St. Anthony, in the city of Mobile, the whole work, as shown by Exhibit B, and attached as aforesaid, to be done in time for J. P. Pond and Wm. O. Pond to complete the stores by the first day of October, 1852; and the said Ellis and Kirkbride are to receive the sum of seven thousand dollars in cash, to be paid as the work progresses. All of which they agree and bind themselves shall be done in a neat, substantial, and workmanlike manner. The said parties of the first part are to furnish the brick and material necessary and proper for the building aforesaid. As witness our hands and seals the day and year aforesaid.

Signed COLLINS & CLEVELAND, [SEAL.]
By WM. F. CLEVELAND. [SEAL.]
ELLIS & KIRKBRIDE, [SEAL.]
By J. KIRKBRIDE. [SEAL.]

In presence of

(Before signing.)

It is also understood that the said parties of the first part are to furnish all the stores, and side-walks filled up to receive the brick and *store*, and other materials that may be required to complete the above work, so as to enable the said parties of the second part to comply with the above *dates*.

Messrs. COLLINS, CLEVELAND & Co.:—

SIR: We the undersigned do hereby propose to lay the brick in the six three-story stores according to the plans and specifications, you furnishing all the materials to complete the same, for the sum of four dollars and fifty cents, measurement, and 10 cents per foot for all tack joints. Also, we the undersigned do propose to build the six stores according to the plans and specifications, you furnishing all the material, for the sum of seven thousand dollars.

$7000 00. Yours, &c.

(Signed) ELLIS & KIRKBRIDE.

MOBILE, March 10, '52.

Exhibit C.

Specification of materials, labor, &c., required in the construction of a building to be erected between Front and Commerce Streets, and St. Louis and St. Anthony Streets, in the city of Mobile.

Description.—The building is to be brick, three stories high, 245 feet by 80 feet from out to out (see plans), forming six separate tenements, and to be disposed in respect to openings. Fireplaces, chimneys, &c., as per plans. The fronts of building to be in general appearance as per elevation of fronts.

Brickwork.—The walls of first and second stories to be two bricks thick; those of third story and projection above the roof to one and a half bricks thick; the ends of building, viz., on St. Louis and St. Anthony Streets, to have battlement walls, see section; cornice brick, dental or block; cornice with good and heavy projection for elevation, the exterior to be laid flat joint in white; the insides of walls struck joints; the openings to be arched through; both fronts to be built upon reverted or inverted arches; the paving of the fronts and ends of building, with the pavements of first floors, to be taken into consideration by the contractor; chimney flues to be well plastered inside; all walls and piers for columns to rest on piled foundation; inverted arches to be laid in cement; there is to be an opening left central in each party wall, second story say 4 by 8 feet.

Carpentry.—The joists of second, third, and fourth floors, to be tennoned with girders, the girders to run longitudinally, and resting on party walls; the roof to be truss-framed, as represented by section of truss; all framing to be substantial and workmanlike. There will be three lines of anchors in the ceiling joists of each tenement, say iron bars half inch by two in. wide, and five feet long, turned both ends, and running through girders, and spiked fast to ceiling joists, ends let into joists. All walls to be well anchored to joists and girders. End walls also to be anchored to ridge of roof. All stairways, scuttles, &c., to be good and substantially framed.

Doors.—There are to be six double-sash doors, to the front on Commerce Street, to be in two folds, $2\frac{1}{2}$ inches thick, to have shutters with all the requisite fastenings, &c., for portable shutters. The balance of the doors $2\frac{1}{2}$ inches thick, panelled outside, and lined on the inside with *with* $\frac{3}{4}$ tongued, grooved, and planed narrow pine plank. These doors also to be in two folds, the frame for same to be made of 4 × 4 scantling, in the usual style, for store doors, for size of same see section. The transoms to be framed with $\frac{5}{8}$ inch iron rods, running perpendicular, and set 3 inches apart. Whole height of frame 12 ft., door 9 feet, width to suit piers, see section of half front. Three doors to be cased inside with 5 inch wide plain casings.

Windows.—Of the second story 12 lights, 12 × 20, good American glass (these to be half or single) hung. There will be six gib windows in the second story on Commerce Street—box frame.

Those of the third story 12 lights, 12 × 18, good glass, frames for same to be of suitable size, ploughed on the inside, in the usual style for jam casings.

Stairs.—As per plans; first story to be inclosed with plastered

studded partitions; second story to have round rail square banisters, and square *newel.*

Hatchways.—All to be cased round openings, and all hatches to be made of two thicknesses, 1¼ narrow pine plank, planed, tongued and grooved, and nailed with hammered or wrought nails, to be in two folds, hung with good starp hinges, and to have all other requisite fastenings.

Roof.—To be sheathed with narrow inch planks, prepared by the carpenter for slating.

Painting.—To be two coats, all work usually painted.

Floors.—The first floor to be double, and laid on brick pavement, this part to be 1½ inch narrow pine plank, and laid six inches apart. The upper floor of same to be 1½ inch narrow pine plank, square joint, and rough face, and to be well nailed.

Floors of second and third stories with 1¼ narrow pine plank, planed, tongued and grooved, and nailed well, laid in courses. The garret floor wide, rough, and nailed.

Balconies.—If any, preparations made for same by contractors, the carpenter to lay the floors.

Gutters and Conductors.—The iron pipes, 1st story, will be sunk into the wall, both fronts.

Height of Stories.—First story 14 feet, second story 13 feet, 3d story 12 feet. Foundation about four feet below surface.

Hardware.—Two doors of each store, viz., one on Commerce, and one on Front Streets, to have a first rate Stoudon lock, with all the requisite bolts for same, all other doors to have good patent chain bolts.

Finish.—The second story windows to be finished with plain joint casings, 5 inches wide, face casings, and suitable band mouldings. The jibb windows to be finished to floor.

Materials furnished by Proprietors.—The contractors will furnish lumber for all window frames, for sash, for doors, and all glass, and all nails; all other materials furnished by proprietors. Foundation prepared by proprietors.

Rec'd from Messrs. Cleveland and Collins, *to* estimate from Feb. 19th, 1852. WALKER & GARROWAY.

The foregoing deposition of Jonathan Kirkbride, was taken, subscribed, and sworn to, at the city of Mobile, on the 18th day of December, 1856, before Richard B. Owen, Esqr., a commissioner appointed to take depositions in the said cause. And the said depositions of J. P. Pond, William O. Pond, and Jonathan Kirkbride, were filed in my office, on the 7th day of April, 1857.

Attest, GEO. E. HOLT, *Clerk.*

No. 26. *Interrogatories to be exhibited to Peter Hamilton and Thomas A. Hamilton, Witnesses at the instance of the Defendants in said cause.*

1. Do you know the parties, and what is your profession?

2. Did you or not act as commissioners in the examination of certain witnesses in the case of Sidney E. Collins *vs.* Wm. R. Hallett and Robert L. Walker, Executors of Joshua Kennedy, dec'd, and others, in the Circuit Court of the United States for the 5th Judicial Circuit, in 1845? If so, please state what witnesses were examined by you, and state particularly if the plaintiff, Sidney E. Collins, was present at the examination of any of the witnesses, and which one of them.

3. Did any of the said witnesses give any evidence in relation to the value of the property then in controversy? If yea, state which one. Was the plaintiff present at the examination of that witness, or those witnesses, and did he or not have any opportunity of knowing what was testified to?

4. Were you present at the trial of said cause? and state if the plaintiff was not in the court-room during the trial, and giving attention to the evidence and the arguments in the cause.

5. Do you know, or can you set forth, any other matter or thing that may be a benefit or advantage to the parties in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH, & HERNDON,
Solicitors for Defendants.

Filed 24 February, 1857. GEO. E. HOLT, *Clerk.*

Cross-interrogatories to said Witnesses by the Complainant in said cause.

1. Please state the name of each witness examined by you in the case referred to as to the value of the south half of the Alex. Baudain tract, or the land north of St. Louis, south of St. Anthony, and east of Royal Street, in Mobile.

2. Set forth the answer of James Inerarity to the 19th cross-interrogatory as sworn to and subscribed before P. Hamilton on the 28th February, 1845.

3. Set forth what Henry V. Chamberlain said on the subject, and particularly his answers to the 6th and 7th cross-interrogatories as sworn to and subscribed before P. Hamilton on 4 March, 1845.

4. Set forth the answer of William Kitchen to the 7th interrogatory sworn to 25 March, 1845.

5. What was Jacob Baptiste's evidence on this subject given in answer to the 11th cross-interrogatory?

6. Set forth the interrogatories put to Sidney Smith, John Bloodgood, and William Jones, as to the value of said property, and the several answers of each to the same, and the date of the examination of each of them by you.

7. State the value put upon said property by any other witness examined by you in said cause.

8. Were not said witnesses or some of them examined as to the

tax assessments on real estate in Mobile compared with its actual value? What was the testimony of Sidney Smith, John Bloodgood, and William Jones, Jr., on this subject?

9. Were not many or all of the witnesses examined before you questioned as to who were interested in the prosecution of said suit. Please set forth the answers of each witness on this point.

10. If you state that Sidney E. Collins was present when you examined said witnesses (or any of them), state the name of the witness, the time and place of the examination, and who else was present.

11. Do you know the handwriting of James H. Campbell? If yea, look upon the paper marked H, a copy of which is an exhibit to the bill marked H, and state whether said paper so shown to you is in his proper handwriting.

K. B. SEWALL,
Of Counsel for Complainant.

Filed 3d March, 1857. GEO. E. HOLT, *Clerk.*

No. 26. *Deposition of Thomas A. Hamilton.*

The said witness, in answer to the direct and cross-interrogatories aforesaid, says on oath:—

1. I know Sidney E. Collins, Drury Thompson, William F. Cleveland, and James Campbell. I am a practising lawyer in Mobile, Alabama.

2. I did act as commissioner in the examination of a good many witnesses in the case alluded to. In the year 1845, I examined, as witnesses in that case, Edward Hall, Origin Sibley, Jacob Baptiste, Adolph Batre, Augustin Demouy, Joseph S. Kennedy, Jesse Carter, Jacques Chighizola, John Fowler, Charles L. Delage, Mrs. Mary Raine, Sidney Smith, John Bloodgood, George Huggins, John Ticknor, Cyrus Sibley, William Jones, Jun'r, Daniel Robertson, William Fisher, John S. Gliddon, Joseph Cain, John K. Collins, Joseph B. Earle, Daniel Walker, Henderson Kinney, Jacob B. Walker, and, perhaps, some others also. I do not remember whether Sidney E. Collins was present at the examination of any of them. I am rather under the impression that Sidney E. Collins went with me on one occasion to show me where William Fisher, one of the witnesses, lived, in order that I might make an appointment with him to come to my office, and give his deposition. I am confident somebody went with me, and am under the impression it was Mr. Collins, but am not certain. I do not remember of his being present at any time when I was examining a witness, and I scarcely think he was.

3. I think some of the witnesses examined by me did give some evidence in regard to the value (either then or previously) of the land then in controversy or of some parts of it. I think Sidney Smith, John Bloodgood, William Jones, Jr., and perhaps some others gave their ideas as to the value of the land in 1844 and previously, about which they were then interrogated. I believe other witnesses also testified as to the value of the same lands many years before,

say about 1829 or 1830. I do not think Mr. Collins was present at the taking of any of the testimony by me. I do not remember that Collins ever saw any of the testimony taken by me until after it was returned into court. I presume, of course, he could have seen it, after the testimony was published in court, if he chose to do so.

4. I do not remember whether or not I was present in court during any part of the trial of that cause. I do not know whether or not Sidney E. Collins was present in court during the whole or any part of that trial.

5. I am not aware that I know anything else that could be of benefit to the defendants.

To the cross-interrogatories the said witness answers:—

1. By reference to the depositions taken by me, and now on file in the case of Sidney E. Collins *vs.* Hallett & Walker, executors in the Circuit Court of the United States, for the 5th Judicial Circuit and Southern District of Alabama, I presume it can be seen exactly what witnesses were examined by me in regard to the value of the property referred to. I cannot pretend to remember at this distance of time.

2d, 3d, and 4th. I do not know that I was present when either James Inerarity, William Kitchen, or H. V. Chamberlain was examined by my brother (Peter Hamilton) in the case alluded to.

5. By reference to the depositions taken by me in the case alluded to, I find that Jacob Baptiste answered to the 11th cross-interrogatory as follows, viz: "He is acquainted with the ground described in this interrogatory. In 1820 the land was unoccupied; some portion of it was dry, and some portion was low, marshy ground. The most of it was low and marshy or covered with water. Some of the ground betwixt Royal and Water Streets was dry, the rest was low and wet. In 1825 the land was pretty much in the same condition as in 1820. Deponent does not recollect precisely, but somewhere about 1829 or 1830, or perhaps a little before, this land had begun to be filled up and improved. Deponent does not think the land described was worth more than five or six thousand dollars in cash in the year 1829 or 1830. It might have been worth a little more. Deponent does not recollect exactly what quantity of land there was."

6. The interrogatories put to Sidney Smith, W. Jones, Jr., and John Bloodgood, on behalf of the plaintiff in that suit in regard to the value of the land then in controversy, seem to have been as follows, viz:—

"1st. Are you acquainted with the land situated between Royal Street, St. Louis, St. Anthony Street, and the River Mobile? How long have you been acquainted with it?

2d. What was the value of that land in 1829 and 1230? What was the value in 1844?

"3d. Were there any sales of land in the neighborhood of this land from 1828 to 1832? and if you please state what sales were made, and at what prices, and what was the condition of the property sold.

"4th. If you know anything material to this issue, or to the evidence you have given, or to the matters in controversy, state the same fully and at large."

To the first of these questions Sidney Smith answered as written down by me thus: "He knows the land designated in this interrogatory. He has known it for the last ten or twelve years, he did not take much notice of real estate before that time." To the second his answers were thus written by me, viz: "He cannot tell the value of said land in 1829 and 1830. He thinks it would have been worth at least a hundred thousand dollars as vacant property in 1844." To the third his answer was thus written down by me: "His recollection of this property from 1828 to 1832 is not very accurate. He cannot testify as to any sales made from said property during those years." To the 4th his answer was thus written down by me: "He knows very little of the issue in this suit, and cannot state anything further, so far as he is aware, that will benefit either party." The answers of William Jones, Jr., to these interrogatories as written by me at the time were as follows, viz: "To the first, he is acquainted with the land referred to. He has known it since the year 1822." To the 2d interrogatory: "He thinks the value of that land in 1829 and 1830 in cash was about from eight to ten thousand dollars. In 1844 witness thinks said land was worth in cash somewhere about one hundred and fifty thousand dollars, without any improvements upon it." To the 3d he answered: "He made a purchase himself of one-third of a lot which was called "the Company lot," having a front of 97 feet on Royal Street, and running through on the south side of St. Louis Street to the channel of the river with the same width, about the year 1829, for four thousand six hundred dollars, on the following terms, viz., one-fourth cash, and the balance at one, two, and three years without interest as he thinks. Witness also purchased in 1830 one-sixth of the same lot for three thousand dollars on the same terms as to credit as in the purchase first named. Witness did not consider said property worth what he paid for it, but he was almost compelled to purchase in order to extend and complete a warehouse which he had previously commenced on the south side of said property. Witness does not know of any other purchases in that neighborhood at that date. The property he has spoken of as purchased by him was entirely unimproved." To the 4th he answered: "He is not aware that he knows anything further material to either party." The answer of John Bloodgood to these interrogatories, as written down by me at the time, were as follows, viz: To the first interrogatory was written thus: "He knows the tract of land designated. He has known it for the last 20 years." To the 2d thus, viz: "He should think it was worth or would have

sold for twenty-five or thirty thousand dollars, equal to cash, in 1829 or 1830; thinks it was worth about one hundred thousand dollars in cash in 1844, without the buildings and improvements upon it." To the third thus, viz: "There was a sale of about 92 feet front on Royal Street, and running through to the channel of the river on the south side of St. Louis Street, for cash (as he thinks) for ten or twelve thousand dollars. He thinks this sale was made in 1828." To the 4th thus: "He cannot answer further unless expressly interrogated." The following interrogatory was amongst those put by the defendants, or some of them, to Sidney Smith and John Bloodgood, viz: ("12th), when you speak of the value, in 1829 or 1830, of the lands lying between Royal Street and St. Louis Street, St. Anthony Street and the river Mobile, do you mean their cash value then, or what they might have sold for, on the usual credits given on the sale of lands in Mobile in past years? Please to make the same explanation in regard to the valuation (by you) of these lands in the year 1844. To this cross-interrogatory John Bloodgood's answer appears to have been thus written down by me: "He has already answered this interrogatory in substance." And Sidney Smith's answer was thus written down by me, viz: "He cannot answer as to the value of these lands in 1829 and '30. When he speaks of their value in 1844, he means their cash value." The following cross-interrogatories were also propounded for the defendants in said suit to said Smith, Jones and Bloodgood (31st cross-interrogatory): "Please to state what, from 1830 to 1840, was about the average price per cubic foot charged and paid for filling up water lots in the city of Mobile. Can you form an estimate of the money and value of the labor expended by Joshua Kennedy in filling up and reclaiming the property described in the first direct interrogatory? Was it not necessarily a very great sum? Might not a reasonable estimate range from fifty to seventy-five thousand dollars?" And (32d cross-interrogatory) "Will you state whether, in 1829 or 1830, this property (meaning the property described in the 1st direct interrogatory) had anything like a known and determinate value, or was its value then prospective and speculative, and liable to be variously estimated?" And (33d cross-interrogatory) "Was this property, in 1829 and '30, from its marshy state, and its situation in the suburbs of the city, in a condition to be laid off and sold in lots of 50 by 100 feet? Would such lots then have been at all in demand? Could a single lot of that size in this property, standing alone, have been then filled up and improved without a great disproportion of cost and expense? Would not embankments and palisades have been necessary around such lot to prevent the material used in filling up from spreading on the other lots around or washing away? Could any improvements then have been made in a lot of that size that was likely to pay?" And (33d cross-interrogatory) "state what you suppose may have been the expense since 1830 of making and maintaining the wharves in part of the property, judging from other wharves similarly situat-

ed. What is the average cost per year of keeping a wharf of the size of one of these in repair? What was about the cost of making one of the long wharves, as used in past years, when they commenced at Water Street and extended out to the river? What of making one of the present length? How long will a wharf last upon an average?" To these questions Wm. Jones, Jr.'s answers were written down by me as follows, viz: To the 31st cross-interrogatory: "He thinks, from 1830 to 1840, the average price of filling up water lots was about from 2½ to 3 cents per cubic foot. Joshua Kennedy must have been at a great expense in filling up the property mentioned in the first direct interrogatory; cannot say how much." To the 32d: "The value of said property in 1829 and '30 was very uncertain, and far from fixed." To the 33d: "This property was scarcely in a condition to have been laid off and sold in lots of 50 by 100 feet in 1829 and '30. Such lots would not have been in much demand. Such a lot standing alone could not have been filled up at that time without a great disproportion of cost, and it would have scarcely paid for the trouble and expense. Some precaution must have been used to prevent the material used in filling from spreading or being washed away." (To the 33d): He thinks, judging from other wharves, it would have cost from two to three hundred dollars per annum to keep each of the wharves in front of this property in repair. The cost of building one of the long wharves spoken of, witness thinks, was from four to five thousand dollars. The cost of one of the present length would be about from two to three thousand dollars. A wharf will last from four to five years on an average." To the said cross-interrogatories John Bloodgood's answers were thus written by me, so far as they seem to have been answered by him. To the 31st: "He cannot say." To the 32d cross: "Deponent craves leave to refer to his answer to the 2d direct interrogatory." To the 33d: "It is difficult to answer. A wharf, at the present time, would cost about $17 per square of 100 feet; cannot say what would have been the cost in years long past." To the said cross-interrogatories Sidney Smith's answers were thus written down by me, as far as they seem to have been answered by said Smith, viz: To the 31st and 32d: "He cannot tell;" and to the 32d: "He cannot answer the first part of this interrogatory. It is difficult to say what would have been the expense, since 1830, of maintaining these wharves. A wharf, now-a-days, from the barrier out, costs about $17 per square of 100 feet. Deponent does not know what wharves used to cost. If any other material questions were asked of or answers given by said Smith, Jones and Bloodgood, or any of them, in that examination, in reference to the value of the property alluded to, they have escaped my notice in looking through the papers. Of course I cannot pretend to recollect all that occurred upon the examination of witnesses by me in that suit. The depositions were taken and returned into court, and it is only by reference to the court papers that I am able now to state what occurred. I

do state, however, that what is there certified to by me as having occurred *did occur*. The dates of the examination of the several witnesses, Smith, Jones and Bloodgood, by me, in the said cause, seems to have been as follows, viz: Sidney Smith on the 15 of April, 1845, John Bloodgood on the same day, and William Jones, Jr., on the 18 day of April, 1845."

7. I cannot state from memory the value put upon the property alluded to, by any of the witnesses that were examined by me in the cause alluded to; but the papers returned by me, as one of the commissioners to take testimony in the said cause, and the depositions as certified to by me, will show exactly what each witness testified to at the time before me.

8. I think some of the witnesses were examined as to the tax assessments on real estate in Mobile, compared with its actual value. I cannot state from memory what was the testimony of Sidney Smith, John Bloodgood, and Wm. Jones, on this subject. I wrote down their testimony when I examined them, and it was returned into the United States Circuit Court; and the depositions certified to by me, together with the interrogatories put to the witnesses respectively, will show what they testified to before me, as written down at the time.

9. I do not remember how many of the witnesses that I examined were questioned as to who were interested in the prosecution of said suit. I am not able, from memory, to set down any of the answers given by any of the witnesses on this point, and must beg leave to refer to the depositions as taken and returned into Court, for accurate information on this subject.

10. I have not stated that Sidney E. Collins was present at the examination of any of the witnesses by me. I do not think he was.

11. I am not very well acquainted with the handwriting of James H. Campbell, Esq. The paper alluded to is not shown me. I am informed by the commissioner, Mr. Owen, that said paper has not been furnished to him. THOS. A. HAMILTON.

The foregoing deposition of the witness, Thomas A. Hamilton, Esq., was taken, subscribed, and sworn to at the city of Mobile, on the 11th day of March, 1857, before Richard B. Owen, Esq., a commissioner appointed to take depositions in the said cause.

No. 26. *Deposition of Peter Hamilton.*

The said witness, in answer to the aforesaid direct and cross-interrogatories, says, on oath:—

1. I know the parties to this suit. I am an attorney of this Court, and of the State Court of Alabama.

2. I did act as commissioner in the case named. I took the deposition of James Inerarity, S. H. Garrow, H. V. Chamberlain, Wm. Kitchen, William Brooks, S. Penny, J. P. Remy, D. Jones, Chester Root, Joseph Krebs, and perhaps of others. Sidney E. Collins was present when H. V. Chamberlain was examined. I do not now

remember whether he was present at any other examination or not. That Mr. Collins was present at the examination of Judge Chamberlain, is impressed on my memory from the fact, that Judge Chamberlain was a very important witness, and there was some hesitation in his answers about the date of some deed, between Dr. Kennedy and Samuel Kitchen, I think, as compared with a conveyance to Mr. Inerarity. Col. Aiken and Mr. Collins were both present, such is my recollection; and when this hesitation was discovered, they almost simultaneously rose and left the room. Mr. Collins returned almost immediately, with his counsel, Hon. John A. Campbell; and Mr. Aiken returned, with George N. Stewart, Esq. I am not so pointed in relation to Mr. Stewart, but I am certain as to Mr. Collins being present, and that he immediately discovered the point of difficulty and left the room. He immediately returned in the course of a few minutes, and brought Mr. Campbell with him. I know that Col. Aiken was present. I think that Mr. Stewart was brought in the room by him.

3. My recollection is, that nearly all the witnesses testified to the then or past value of the land. I cannot at this time recall the fact, that Mr. Collins was present at the examination of any other witness, except Judge Chamberlain.

4. I was not present the whole time of the trial of the case, but was there during parts of the trial. I recollect that Mr. Collins was present during portions of the trial. I saw him in the Court-room, apparently attentive to the case.

5. My memory hardly justifies me in stating positively as a fact anything beyond what I have above stated; but I certainly derived the impression that Mr. Collins made himself familiar with the proofs as to the value of the land involved in his suit, and was active in procuring the testimony to that point.

Answers to Cross-Interrogatories.

1. I think all the witnesses I examined spoke to the then or past value of the land, more particularly Penny, Jones, and Remy. I have not time to examine the entire record of the case, and speak from memory.

2. The answer of James Inerarity can be found in the record of the cause. I refer to that record.

3. The testimony of Judge Chamberlain is of record in this Court. I refer to that record.

4th, 5th, and 6th. The information sought by these interrogatories is of record in the case of Collins *vs.* The Heirs and Executors of Joshua Kennedy, in this Court. I refer to that record for answer to these questions.

7th, 8th, and 9th. I cannot undertake to state in detail the valuation of said property now, nor the particular character of the questions and answers in the case referred to. The whole can readily be ascertained by looking at the return made by me to the Court, of

the execution of the commission. The record is not in my possession.

10. Sidney E. Collins was present at the examination of Henry V. Chamberlain. Judge Chamberlain's testimony was taken by me in the back room of the office of P. and T. Hamilton, in Mrs. Robb's building, on Royal Street, in the city of Mobile, on or about 4th March, 1845. The persons were Judge Chamberlain, John G. Aiken, Sidney E. Collins, and myself; a part of the time John A. Campbell, Esq , was present; also George N. Stewart, Esq. I think possibly Dr. Hastie.

11. No exhibit or document marked Exhibit H or H is shown me. My acquaintance with the handwriting of James H. Campbell is hardly sufficient to enable me to swear to it if it was shown to me.

P. HAMILTON.

The foregoing deposition of the witness Peter Hamilton, Esq., was taken, subscribed, and sworn to at the city of Mobile, on the 17th day of March, 1857, before Richard B. Owen, Esq., a commissioner appointed to take depositions in the said cause.

And the said depositions of Thomas A. Hamilton and Peter Hamilton were filed in my office on the 7th day of April, 1857.

Attest, GEO. E. HOLT, *Clerk.*

No. 27. *Interrogatories to be exhibited to William H. Platt, a Witness at the Instance of the Defendants in the said Cause, and who resides at Petersburg, State of Virginia.*

1. Do you know the parties, and when did you first see or become acquainted with the plaintiff?

2. Did your visit to Texas have any relation to, or connection with, a cause then pending in the Circuit Court of the United States, wherein Sidney E. Collins was plaintiff, and Wm. R. Hallett and Walker, executors, and the heirs of Joshua Kennedy were defendants? Did the plaintiff know of this suit? Did he know who were the parties? Did he or not return to Mobile with you? Did you or not freely and frequently speak of the suit, the property sued for, the parties, &c.?

3. Do you or not know that the plaintiff was fully informed when he arrived in Mobile, or soon thereafter, of the nature and character of the bill, of its allegations about his citizenship, his infancy, &c.? Was or not the averment that he, Collins, was a citizen of Missouri spoken of frequently by you and Col. Aiken and said Collins? Did he complain of the averment as to citizenship, or find fault with his attorneys for making the averment? State fully.

4. While the suit was pending, was the plaintiff frequently in Mobile attending to the case? State if he knew the property and its value, and what estimate did he place upon it about the time of the trial, or before the trial, or up to 1851?

5. When the suit of Collins against the executors and heirs of Kennedy was commenced, what estimate was placed upon his claim by the executors and heirs? What were you authorized to give him for

his claim? What did you offer? Would $10,000 at that time have been considered a moderate, or a reasonable, or a high price for his claim and interest? State fully.

6. Did or not the plaintiff know before the trial that others besides Thompson had an interest in the suit? Was it not generally known that the defendants in this suit had an interest in that suit? Was it or not spoken of, and did or not the plaintiff know it?

7. Do you know or can you set forth any other matter or thing which may a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON, *Def'ts' Attorneys.*

Filed 13th January, 1857. GEO. E. HOLT, *Clerk.*

Cross-Interrogatories to the said Witness, on the Part of the Complainant in said Cause.

1. Please state your present residence, and when you ceased residing in Mobile?

2. What was your profession prior to your leaving Mobile?

3. Do you not know, or have you not been informed, that before you saw the complainant, Mr. Collins, in Texas, in 1845, Drury Thompson had just paid him a visit, and had prepared him for your reception, telling him what to say to you, and what to refrain from saying or doing? And did not Mr. Collins, in his interview with you, speak and act like a man who had been put on his guard? Did he not show an unusual want of frankness and of confidence?

4. Did not Mr. Collins, in all your interviews with on the subject of said suit, appear to be acting under restraint, as though in some way controlled by others? And when you arrived with him in Mobile, and after you had introduced him to Mr. Aiken, did he not exhibit the same conduct, and resist all your overtures, and say he must see his counsel?

5. Do you not know, from information from Campbell, Cleveland, and Drury Thompson, or some of them, that shortly before your visit to Texas Drury Thompson had gone there to anticipate your visit, and to break the matter of the suit to Collins; to advise him, when you should call on him and speak of the suit, to appear to know all about it, and manifest no surprise at anything you might say about it, that your object was to entrap him, and that he must answer in a way to head you off, and not commit himself?

6. Would Mr. Collins ever have known or heard of the suit, had it not been for your projected visit to see him on behalf of the heirs and executors of Kennedy?

7. If in answer to any part of the second direct interrogatory you have said that you fully and frequently spoke with Collins of the suit and the parties, please to specify what, if anything, you ever said to

him about the parties, and what parties you spoke of, and when and why?

8. Did you, prior to 1851, know that James Campbell and Wm. F. Cleveland were interested in said suit? If so, how did you know it, from what, from whom, and when?

9. Was not Drury Thompson the only person, besides the complainant and his solicitors, known to represent said suit, up to the year 1851? If any one else was supposed to be interested, was it anything more than a mere suspicion, and was any such suspicion shared by any one except the defendants in that suit, their counsel, and friends?

10. So far as you know, did the complainant, Mr. Collins, prior to 1851, know, or have any reason to believe, that any one besides Drury Thompson and his solicitors had any interest in the prosecution of that suit?

11th. So far as you know, was not Mr. Collins, while he was in Mobile, during the pendency of that suit, very reserved on the subject of the suit? Did he not stay at the house of Drury Thompson, and was he not much with him, and did he not appear to be much under his influence?

12. Did not Mr. Collins at one time pending the suit, when yourself and Mr. Aiken proposed new terms, state to you, in substance, as follows: "When you can play to the tune of $100,000, you may talk to me on the subject?"

13. What was the estate claimed in the bill of Collins when his suit was commenced fairly worth? What did the defendants consider it worth?

14. Was the name of James Campbell, or of Wm. F. Cleveland, prior to 1851, ever mentioned in the presence of Collins, as having any interest whatever in said recovery? If yea, when and where, by whom, and under what circumstances?

15. Have any of the defendants in this suit, or their solicitors, or agents, seen you, conversed with you, or written to you on the subject of the suit, or of your examination? If yea, please set forth all such conversations and letters, whether with or from James Campbell, Wm. F. Cleveland, Drury Thompson, Chandler, Smith & Herndon, John A. Campbell, James H. Campbell, or any of them?

16. Were you not examined as a witness in the case of Collins *vs.* The Heirs and Executors of Kennedy, and are not your answers to the 7th, 8th, 9th and 10th interrogatories in that case correct, or can you now vary them? If so, in what respect? Please set forth, if you have not already done so, all that ever occurred between Mr. Collins and yourself in regard to that suit.

K. B. SEWALL, *of Counsel for Compl't.*

Filed 27th January, 1857. GEO. E. HOLT, *Clerk.*

No. 27. *Deposition of Wm. H. Platt.*

The said witness, in answer to the several direct and cross-interrogatories aforesaid, deposes and says as follows, on oath:—

1. I know the parties; I became acquainted, I think, in February, 1845, with the plaintiff.

2. My visit to Texas had a connection with the cause then pending between the plaintiff and the executors and heirs of Kennedy. It was in part connection with that cause and was made with a view to compromise with said Collins his claim. I had other business, but I permitted that to engross my whole attention. The plaintiff knew of the suit when I conversed with him. I think he knew who the parties were. He returned to Mobile with me; we spoke frequently of the suit. My impression is, that we spoke frequently also of the property sued for. I remember that we spoke frequently of the party Drury Thompson, and my impression is, also of the other parties to that suit.

2. I have every reason to believe that the plaintiff was fully informed of the nature and character of the bill, when he arrived in Mobile; my impression is, that I informed him in Texas, of the allegation in said bill in regard to his citizenship, my remark to him I think was, "They have hid you out." I think he knew of the allegation as to his infancy, because endeavoring to make with him a compromise of his claim, I used every argument to convince him of its infirmity, and his majority at the time of his signing the quit claim deed made to Joshua Kennedy, must have been one of such arguments. I think upon introducing Collins to Col. Aiken, the allegation of his citizenship in *in* Missouri was spoken of. I do not remember that it was ever alluded to on any other occasions than those mentioned. I remember no complaint on his part of his lawyer's as to the averment, on the contrary, he seemed to be quite satisfied with, and expressed high confidence in his attorneys.

4. The plaintiff was frequently in Mobile attending to the case, while the suit was pending. I think he knew the property, and appreciated its value. I do not know that he ever expressed any estimate of it to me, about the time of the trial, or what estimate he placed upon it up to 1851.

5. As far as I know, the estimate of Collins's claim by the defendant's executors and heirs of Kennedy, at the time the suit was commenced, was very low. They seemed to be confident of defeating his claim. My impressions were mainly derived from Aiken, Hallett and Mesliers. I was authorized to give him exactly what might be estimated would be the cost of defending the suit, and I think that estimate was placed as high as $6000. I do not know that the opportunity occurred for my making him any offer. I know I stated to him that the defendants would give as a compromise, the amount necessary to defend the suit, and no more. My reason for persuading Collins to accompany me to Mobile, was to have him

where there was more money than I could command by my letter of credit in Texas, that amount being only $2000. I believed that something more than the cost of the suit would induce him to a compromise. Not knowing definitely his estimate of the probabilities of his recovery, I cannot say what was his estimate of his claim. With my views of the case, $10,000 would have been a high price, and my impression is, that the defendants at that time, would have so considered it.

6. From my knowledge of the shrewdness of the plaintiff, and my acquaintance with him, I suppose that he knew before the trial, that others besides Thompson were interested in the suit. I cannot answer whether it was, or was not generally known that the defendants in this writ were interested in that. I suppose their interest in the suit was generally suspected by those interested in Court business. I do not speak with confidence in answer to this interrogatory.

6. Nothing further occurs to my mind.

Answers to Cross-Interrogatories.

1. My present residence is Petersburg, Virginia. I ceased residing in Mobile in 1852.

2. My profession prior to my leaving Mobile, was that of a lawyer.

3. I was informed that Drury Thompson had been in Texas before my visit. I am unable to say, that he prepared Collins for my reception—or told him what to say or refrain from saying to me. He spoke and acted towards me, whilst I was in Texas, like a man who had been put on his guard. I thought him a shrewd man, one who would appreciate the truth, and that if I could get him to Mobile he would see the weakness of his claim.

4. Whilst on my visit to Collins, I thought that he was under restraint, and the influence of others. This may have been my opinion, because I suspected that other influences were upon him. He exhibited the same conduct in Mobile, after I introduced him to Col. Aiken. He said, that he would see his counsel before taking any step.

5. I do not remember that I was informed either by Campbell, Cleveland or Drury Thompson, that the latter had gone to Texas to anticipate my visit. I do not think that I ever exchanged a word with Campbell or Cleveland on the subject. I remember after the suit was decided, some pleasantry as to the secret explaining the unfruitfulness of my visit; but I cannot say with certainty, whether it was from Thompson. It may possibly have been from him. I can't say what passed in Texas between Thompson and Collins, as to what course Thompson advised Collins to pursue in his conduct towards me, &c. &c.

6. I cannot say whether Mr. Collins ever would have heard of the suit or not, had it not been for my projected visit. I found upon my arrival that he had heard of it.

7. At this period of time I cannot specify what were my conver-

sations with Collins on my visit to him. I tried to convince him that his claim was a weak one. I spoke to him of Thompson, and his attorneys, John A. Campbell and Daniel Chandler. Can't specify what, or speak more definitely than in my answer to 2d direct interrogatory.

8. I cannot say at what time I *believed* James Campbell and William F. Cleveland were interested in said suit. I cannot say that I *knew* it at any time, I can speak only of my belief, nor can give no date to that belief, nor state how, where, or by whom it was produced.

9. Probably Drury Thompson and his solicitors were the only persons known with certainty to have an interest in, or represent the suit, but I suppose it was suspected by those interested in Court business. As to the suspicion of the community, I cannot speak. I must refer to my answer to the 6th direct interrogatory.

10. I cannot say whether prior to 1851, Collins knew, or had any reason to believe that any persons besides Thompson and his solicitors had any interest in the suit or not.

11. Mr. Collins was reserved on the subject of the suit during its pendency, while he was in Mobile, though not entirely so. I presume he stayed at the house of Drury Thompson, though I never saw him there. Can't say whether he was under his influence or not. They were frequently together.

12. It seems to me that some boastful remark of that kind was made to me by Collins, but what, when, and where, I do not remember.

13. I have no knowledge of the value of the estate claimed in the bill of Collins. When his suit was commenced I understood that it was very considerable. Can't say what the defendants considered it worth. The defendants, I believe, regarded it as a weak claim for a very large amount.

14. I do not remember ever hearing the names of James Campbell or William F. Cleveland, ever mentioned in the presence of Collins as having any interest in said recovery prior to 1851.

15. No communication of any kind has ever passed between the parties mentioned in this interrogatory and myself, on the subject of this suit, or of my examination.

16. I was examined in the case of Collins *vs.* The Heirs and Executors of Kennedy. Do not remember my answers to the interrogatories named; at that time the facts were more distinctly on my mind. I would rely with more confidence on my testimony then than at present. I have endeavored to make my answers responsive to the questions in this examination, but upon much I venture impressions only, as it has been a long time since my attention has been called to the subject matter or parties of this suit. And further this deponent saith not. WM. H. PLATT.

The foregoing deposition of Wm. H. Platt was taken, subscribed, and sworn to, at the city of Petersburg, Virginia, before John Y.

Gholson, Esq., a commissioner appointed to take testimony in the said cause, having been commenced on the 18th and concluded on the 20th of February, 1857, and filed 16th March, 1857.

GEO. E. HOLT, *Clerk.*

No. 28. *Interrogatories to be propounded to Hildreth Bloodgood, a witness on behalf of the defendants in the above entitled cause.*

1. How are you connected with the late Joshua Kennedy deceased?

2. What sum was paid to Augusta Kennedy for the rents and profits for her interest in the property known as the south half of the Alex. Baudain tract from the death of her father until the surrender of the property to the plaintiff in 1851? What was the gross sum of rents and profits during that time in her share? State all you know.

3. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Def'ts' Solicitor.

Filed 25th March, 1857. GEO. E. HOLT, *Clerk.*

Objections by Complainant.

The complainant objects to the interrogatories to H. Bloodgood as irrelevant.

K. B. SEWALL,
Of Counsel for Compl't.

Filed 4 April, 1857. GEO. E. HOLT, *Clerk.*

No. 28. *Deposition of H. Bloodgood.*

The said witness, in answer to the foregoing interrogatories, says on oath:—

1. I married a daughter of the late Joshua Kennedy, deceased.

2. I received from Mr. Hallett, as guardian of my wife, Augusta Kennedy, previous to her marriage, twenty-seven hundred and seventeen $\frac{28}{100}$ dollars, which was the amount coming to her from property deeded to his children by Joshua Kennedy, and which was recovered from them by Sidney E. Collins. I cannot answer the matters further inquired of in this interrogatory.

3. I know nothing more of benefit or advantage to either of the parties in this suit, or pertinent to the issue therein, than I have already stated.

M. H. BLOODGOOD.

The foregoing deposition of the witness, Hildreth Bloodgood, was taken, subscribed, and sworn to, at the city of Mobile, on the 7th day of April, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

No. 29. *Interrogatories to be exhibited to Samuel Penny, a witness at the instance of the defendants in said cause.*

1. Do you know the parties to this suit?

2. Were you, or not, the clerk of the corporation of the city of Mobile in the year 1845, and as such clerk have the assessment book of taxes on real estate in the city, from 1830 to 1845?

3. Were you examined as a witness in the case of Sidney E. Collins *vs.* Wm. R. Hallett and Robert L. Walker, executors of Joshua Kennedy, deceased, and others, in the Circuit Court of the United States at Mobile? and state, if before the trial, or during the pendency of said suit, the plaintiff, Sidney E. Collins, examined the assessment or tax books in your office, and for what purpose, and how often?

4. Do you know, or can you set forth any other matter or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Deft's Solicitor.

Filed 4th February, 1857. GEO. E. HOLT, *Clerk.*

No. 29. *Deposition of Samuel Penny.*

The said witness in answer to the foregoing interrogatories says, on oath:—

1. I know the parties.

2. I was Clerk of the Corporation the time inquired of, and as such had charge of the assessment books for the period mentioned.

3. I was examined by deposition in said case. Plaintiff, I think, did not examine the assessment books in my charge. He may have done so, but if he did, I do not remember it. I remember that he called in, in company with William D. Primrose, Esq., before I gave my deposition in the case above spoken of, and requested me to make out a statement of the assessment of certain real estate (being the same recovered by him from the heirs of Joshua Kennedy) from about 1823 to 1845, to be attached to my deposition as an exhibit in the said case. Being also called upon by Mr. Drury Thompson, one of the defendants in the said case, I did afterwards make out the statement, and attached the same to my answers. The making out of said exhibit involved a labor of several days, and although I had been assured by the parties requesting it, that I should be properly compensated for said job, I have not yet been paid in full. I have answered as fully as I can. The Commissioner informs me that he has not the exhibit in his possession, and that he has not been able to obtain it, and in consequence, without an inspection of it, I cannot state whether it is the same made out by me, as spoken of, or not. The one which I did make out, and attach to my deposition

in the case inquired of, was a true and correct statement from the assessment and tax books of the city. Plaintiff may have seen said statement, but my impression is that he did not, at least before it left my possession. SAM'L PENNY.

The foregoing deposition of Samuel Penny was taken, subscribed, and sworn to, at the city of Mobile, on the 11th day of March, 1857, before R. B. Owen, Esq., a commissioner appointed to take testimony in the cause.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

No. 30. *Interrogatories to be exhibited to Peter Alford and David Barton, witnesses on behalf of the defendants in the above entitled cause.*

1. Do you know the parties to this suit?

2. Where do you (Barton & Alford) now reside? How long have *have* you been living there? Is the situation a healthy and pleasant one, and desirable as a place of residence?

3. Do either of you occupy a house belonging to the plaintiff? How long have you been in possession? What rent did you pay last year? What rent this year, and with whom did you make the arrangement for rent this year? State what the plaintiff gave for the house and lot, and if the house is large and commodious.

4. Were either of you authorized or employed to rent the house and lot of the plaintiff at Citronelle? If so state, *If so state* when, by whom, and what were your instructions as to the house and furniture?

5. Did the plaintiff and his family live at Citronelle? When did they leave and go to Texas? When did the plaintiff return? When did his family return? Where did they stay or live after their return? When did they again go to Texas? When they return to Mobile? Where have they remained since, and where are they now?

6. Did the plaintiff, when he left for Texas with his family in 1855, leave his *furniture* in the house at Citronelle? Where is the furniture now? What did the plaintiff say as to his intention to return to Mobile? State fully and particularly.

7. Did you have any conversation with the plaintiff in relation to the suit he had commenced, and was prosecuted in the United States Circuit Court, against the representatives of Joshua Kennedy, dec'd, for the recovery of what is known as the "Collins property? If so, state when it was, what the plaintiff said in relation to his interest, and the interest of others. State who they were, and all he said about his interest, and the interests of others, and who they were.

8. Do you know, or can you set forth, any other matter or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Solicitors for Defendants.

Filed 18th December, 1856. GEO. E. HOLT, *Clerk.*

1207.

Objections and Cross-Interrogatories filed by the Complainant to the said Witnesses.

The complainant objects to the direct interrogatories to said witnesses, as impertinent and irrelevant, and without waiving, etc., files the following cross-interrogatories:—

1. When did you first become acquainted with the complainant?

2. When and where did you first have any conversation with him, and who were present, and what was the subject of such conversation?

3. If you know anything of the complainant's purchase of the establishment at Citronelle, do you not know that he purchased the house and furniture in it together, for the sum of five thousand dollars, and that he bought it for a *Water Cure* establishment, and not for a family residence?

4. Was not said place used as a Water Cure establishment by Griffin before the complainant bought it, and was it not so used afterwards by Dr. Coyle?

5. Do you not know that within two or three months after the complainant purchased, he was anxious to sell out said establishment, or how long after?

6. Did not the complainant in 1854 tell you he had made up his mind to move back to Texas, and wished to sell the house at Citronelle? And did he not offer to pay you a commission if you could find a purchaser, and if you could not find a purchaser, did he not want you to find a good tenant?

7. Have you not acted, and do you not act as a land broker?

8. What is the location of said house at Citronelle, and for what was it built? Is it not near the railroad depot, and was it not built for a hotel? State its distance from the depot, and the size of the house, and the number of rooms it contains?

9. Is not the location of said house good for a hotel, and is it not undesirable for a private residence? Is it not too near the depot for a private residence?

10. In case of epidemics in Mobile, as the yellow fever, would not said house, from its proximity to the railroad depot, be liable or exposed to such epidemics? Was not the yellow fever, in 1853, in said house, and did not several persons die of said disease in it that year?

11. How large a family has the complainant? Does it not consist of himself, his wife, and his daughter alone, except servants?

12. Is the Citronelle Hotel such a house, or such a location, as would be requisite or desirable as a private residence for a small family, such as the complainant's?

13. Did not the complainant declare his intention of removing to Texas several months before he went?

14. Since complainant removed to Texas, have you not urged him to return and live in Alabama, and used your influence with him to that effect, and has he not declined to do so?

15. If you pretend to say how much time the complainant has spent in Alabama since he removed to Texas, in May, 1855, and where he has stayed, please state how you know, or from whom you have derived your information. Specify what you know of your own knowledge and what you know from hearsay.

16. Do you not know that Mr. Collins, from 1855, has been in Mobile only to attend to matters pertaining to his suit?

17. Is not the health of Mrs. Collins delicate, and is she not benefited by travel and change? Do you not know that she dislikes Citronelle, and prefers Texas as a residence, and is now in Alabama only on a visit, and intends soon to return to Texas?

18. Dó you not know that the complainant has offered to sell the house and furniture at Citronelle, which cost him in 1853 $5000, for $3000? and that he still owns it, simply because as yet he has found no purchaser for it? K. B. SEWALL, *of Counsel for Compl't.*

Filed 27th December, 1856. GEO. E. HOLT, *Clerk.*

No. 30. *Deposition of Peter Alford.*

The said witness, in answer to the direct and cross-interrogatories aforesaid, says on oath:—

1. I am personally acquainted with the complainant, and know the defendants by sight.

2. I now reside in Mobile. I resided until within a few days past at Citronelle; lived there about three months in 1855, and lived there the whole of the year 1856. The situation is a healthy and pleasant one, and desirable as a place of residence.

3. Whilst I lived at Citronelle, I occupied a house belonging to complainant. I was in possession of said house about fifteen months in all, and paid, I think, at the rate of $250 per year. I and a Mr. Black rented said house for a hotel from Wm. D. Primrose in May, 1855, for a year, with the privilege of retaining it three years. On the first of October, 1855, a Mr. Groves took our lease off our hands, acquitting us of all liability therefor. On the first of January, 1856, I again took the house from Mr. Groves for the balance of his time, which was to extend to July, '56, and on the first of that month, I made an arrangement with the complainant by which I was to occupy said house for the balance of the year free of rent in consideration of making some little repairs, and taking care of the house and furniture. I do not know what plaintiff gave for the house. He told me he had given $5000. The house is a large and commodious one.

4. I was not authorized to rent the house by plaintiff at Citronelle after the expiration of the time I had taken for; was not authorized to sell it. He gave me no instructions as to the house and furniture further than to take care of them.

5. The plaintiff and his family came to live with me at Citronelle on the 8th day of December, 1856, and remained there until I gave up the house this month. In relation to his going to Texas, I only know what he told me. In July or August of 1856, he told me he

was going to Texas, and would bring his family back with him. I do not know when he returned; it was some time previous to his coming to stay with me in December. When he came to stay with me, he told me he had been staying with K. B. Sewall, Esq., or with Mr. Vickars, I am not certain which. He also told me in the spring of 1856, which was the first time I had seen him, that he was going to Texas. This is all I know of his trip to Texas. They are living now, I think, at Citronelle.

6. I did not know the plaintiff in 1855. When he left in 1856, he left the furniture with me in the house, and the furniture is there now. When the plaintiff came to my house in December, he told me he did not wish to rent the house any more; that he intended to plaster and complete it and sell it, and some days previous to my leaving the house in December last, he told me he intended going back to Texas about the middle of February of this year.

7. I never had any conversation with the complainant about the suit inquired of in this interrogatory.

8. There is nothing more that I know in relation to this suit.

Answers to Cross-interrogatories.

1. Became acquainted with him in June or July, 1856.

2. The first conversation I had with him was at Citronelle. I cannot say who was present. The subject of our conversation related to the house I occupied, and have had various other conversations with him, the subject matters of which I cannot now remember, further than I have stated in my direct examination.

3. I was so informed by the complainant.

4. I have heard that the house was so used by Griffin & Coyle, though I do not know the fact of my own knowledge.

5. I know nothing about this.

6. I was not acquainted with complainant until June or July, 1856, which was the first time I ever saw him.

7. I never have so acted.

8. The house was built for a hotel, and at the time it was built, its location for that purpose was a good one. It is some fifty yards from the depot, and contains 23 or 24 rooms.

9. 'Tis the best location there for a hotel, and I should think it is too near the depot to be desirable for a private residence.

10. I should think, from its proximity to the depot, that it would be liable to have the yellow fever among its occupants, were that disease an epidemic in Mobile. I have heard that there were cases of yellow fever in the house in 1853.

11. The family of the complainant consists only of the persons named.

12. I should say it was not.

13. I do not know.

14. I never said anything to him on the subject.

15. All the time of his living in Alabama is since May or June

of 1856, and only know of his place of residence then from himself. He told me some time last summer that he was staying at Spring Hill.

16. I know nothing of this.

17. All I know of this is from complainant and his wife, and they tell me that such is the case.

18. Complainant offered me the house and furniture for $3000, and I believe he is anxious to sell, and would do so could he get a purchaser. P. ALFORD.

The foregoing deposition of P. Alford was taken, subscribed and sworn to on the 17th day of January, 1857, at the city of Mobile, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

No. 30. *Deposition of David Barton.*

The said witness in answer to the aforesaid direct and cross-interrogatories, says on oath.

1. I know all the parties.

2. I reside most of the time at Citronelle, in Mobile County. Have been living there since the early part of 1852. The situation is one of the healthiest places in the United States, and is desirable as a place of residence.

3. The house I occupy does not belong to the complainant, it belongs to my wife.

4. I was employed and authorized to rent out the house and lot of complainant at Citronelle. Early in 1854 complainant purchased a house in Citronelle, and resided there until May or June of 1855. He then took a notion to go to Texas, and employed me to hunt him up some one to rent the place. I accordingly wrote to a Mr. Jenks who was keeping a hotel at Selma, letting him know that the house, furniture, negroes, milk cows, and everything else could be rented, and he in reply telegraphed me that by such a day he would come down and look at it, and if he liked it he would take it. He came to Citronelle, looked at the property, and made a bargain with Mr. Collins himself to take it. The papers were then drawn and left with William D. Primrose, Esq., to be finally executed, and Mr. Jenks went to Selma, the understanding being that he was to return by a certain time, execute the papers and take possession. He did not return by the time agreed upon, and after waiting four or five days, and hearing nothing of him, the house was rented by Mr. Primrose to Messrs. Black and Alford. I was to have acted as the agent of complainant in giving Mr. Jenks possession, and taking his receipt for the furniture, &c. I did as such agent take a receipt of Mr. Black of the household furniture, &c., when he and Alford went into possession, which receipt I sent to Mr. Collins by mail in Texas.

5. Plaintiff and his family did live at Citronelle from early in 1854 until about the middle of May, 1855. They left I think about the middle of May, 1855, and went to Texas. Complainant returned

in Christmas week of 1855, and about two or three weeks, as well as I remember, he went back to Texas and brought his family. They lived after their return from Texas in Mobile, or near Mobile, and complainant told me that he had let K. B. Sewall, Esq., have some of his negroes, and that he and his family were staying at Mr. Sewall's house. It was well on into the summer of 1856, before complainant and his family went back to Texas again. I think, though I am not sure, that complainant returned from Texas without his family some time during the summer and then went back after a few days for his family, returning with them about December of last year. Immediately on their arrival they went up Citronelle to complainant's house, and have been there ever since. The lease of Mr. Alford of the house did not expire until January, 1857, and I understood from complainant that he and his family boarded with Alford until January. Complainant about the first of January, 1857, came to Mobile when Alford had given up the house, collected together his negroes, and took them up to the house at Citronelle where they now are.

6. When complainant left with his family for Texas in 1855, he left his furniture, &c., in the house at Citronelle. He also left his negroes and stock there, and also his library. The furniture is still in the house; some little of it has been misplaced, but it is all there pretty much. When complainant first went to Texas in 1855, he told me that his wife's relations lived there, and that he was going to make them a visit and attend to some business he had there, and gave me to understand he was coming back to Mobile. On his return from Texas about the 1st of January, 1856, he told me he was going to gather up his negroes and take them all to Texas and make a permanent settlement there. Said also he wanted to sell his property at Citronelle, that is the house and furniture, and asked me what it could be sold for. He priced it at $4000 for all except his library. Some time early in 1856, complainant made himself an arrangement with Mr. Alford, by which the latter was to hold the house and furniture until the 1st of January, 1857, and since his last return from Texas, and the expiration of Alford's term, he has taken the house, &c., into his own possession, and employed me to sell it for him at $3000, the library being excepted.

7. In 1852, Mr. Collins kept a desk at the office of Wm. D. Primrose, Esq., and I beng frequently in Mr. Primrose's office made his (Collins) acquaintance there. I was there engaged in hunting lands and the titles to them, buying and re-selling land warrants, &c., and in a conversation I had with complainant, he told me he would give me an interest in any lands I could find that his father was entitled to, except what is known as the Collins tract in Mobile, and another tract in Baldwin County known under the Spanish survey as section 38 in the south prong of Fish River, township 7 S., R. 3 east. He said he did not want any more lands for himself, as he had recovered enough in Mobile from the heirs of Kennedy to make him and those interested with him rich for life, but that he wanted others that he might recover for his half brother. I knew who the parties were

who were interested with him in the recovery from Kennedy's heirs, but do not remember that he said anything as to who they were, nor do I remember that he said anything as to the respective interests of himself and the others, further than that there was enough to make them all rich for life, and that for other lands which he might succeed in recovering he wanted them for his half brother.

8. I believe that I have answered all that I know material to the issue in this cause.

Answers to the cross-interrogatories.

1. In eighteen hundred and fifty-two.

2. The first conversation of any length or particularity I had with him was the one testified about in my answer to the 7th direct interrogatory, that took place in the office of Mr. Primrose. I do not think any one was present except complainant and myself. Mr. Primrose introduced the subject about my being a land hunter, &c., but I do not remember whether he was present during the subsequent conversation or not.

3. He told me he purchased the house and furniture together for $5,000. Mr. Griffin, from whom he bought, also told me the same. The house had been kept as a water-cure establishment for a few months, by Mr. Griffin, under the direction of Dr. Coyle; and my understanding at the time Mr. Collins purchased was, that he intended to carry it on as such; which he did for a few months longer, when there arose some disagreement between Mrs. Collins and the boarders, or patients, and Mrs. Collins then said, that Mr. Collins had bought the establishment especially for her benefit; that she was not obliged to take boarders, and would make the house a private residence, which was done until they went to Texas, as above stated. They took in travellers occasionally. A young man, a student of Dr. Coyle, remained with them until they went, I believe. Mr. Collins' object in buying was, that his wife's health might be restored by the water-cure treatment.

4. Mr. Griffin kept the house, and Dr. Coyle was the physician.

5. Do not remember that he ever told me he wished to sell until about the close of 1855. He always told me before that he wished to rent it.

6. About the last of December, 1855, or the first of January, 1856, was the first time that complainant told me he wanted to sell his property at Citronelle, and intended to move back to Texas; and he then offered to pay me a commission to find a purchaser at $4,000. He now holds it at $3,000.

7. I have, and do now act as a land broker.

8. The house at Citronelle is located near the railroad depot, and was built for a hotel. It is about an hundred feet from the depot, possibly more. It is a large house, and I suppose contains upwards of 20 rooms. It is a good location for a hotel, and the location is a good one also for a private residence, as it would be handy to the railroad for a business man doing business in Mobile.

10. In ordinary epidemic years from yellow fever in Mobile, I should say that said house would be no more liable to the epidemic than any other place on the railroad or river. 1853 was an extraordinary yellow fever year, and the fever spread far and wide. There were cases of the fever in said house in 1853, and persons died of it there.

11. Complainant's family consists only of himself, wife and daughter.

12. There is more room in said house than they could occupy as a private house.

13. Complainant told me frequently of his intentions to go to Texas on visits, but never told me that he intended to move his negroes there, and make a permanent settlement, until the time mentioned in my direct examination, and I do not know whether he has made such permanent settlement there yet or not.

14. Since he went to Texas, at the time above named, I have frequently told him I would like him to come back to Citronelle to live; that I would like to have him as a neighbor; and he said he had fully made up his mind not to bring his wife back here to live; that her people lived in Texas; that she could enjoy herself better with them, &c., and that he never would be a citizen of Citronelle, or Alabama again, as long as his wife lived.

15. My knowledge of the time which I have stated that complainant spent in Alabama, since the time inquired of, has been derived from himself, and from seeing him here.

16. I do not know what has been his business here. The first time I ever heard of this suit was some time last fall.

17. Her health is delicate, but I cannot say whether or not it was benefited by travel and changes. Her health was much improved during her residence at Citronelle. I do not know that she dislikes Citronelle, nor do I know that she prefers Texas as a residence. Have heard both complainant and Mrs. Collins say, that as soon as they could sell the house, &c., or whether they sold or not, they intended soon to go back to Texas.

18. He does now offer it for sale at $3,000, and I believe he would sell it at once, if he could find a purchaser.

DAVID BARTON.

The foregoing deposition of David Barton was taken, subscribed and sworn to at the city of Mobile, on the 28th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause. And the said depositions of Peter Alford and David Barton were filed in my office on the 7th day of April, 1857. Attest: GEO. E. HOLT, *Clerk*.

No. 31. *Interrogatories to be exhibited to Harvey Williamson, a witness on behalf of the defendant in the said cause.*

1. Do you know the parties?
2. Do you know the property at Citronelle, owned by the plaintiff,

and kept as a hotel? If yea, state how long have you known it? When was it occupied by the plaintiff? When did he leave Citronelle with his family for Texas, and when did he return to Mobile?

3. When the plaintiff left Citronelle with his family for Texas, did he or not leave his furniture and negroes? If yea, state the furniture he left, and its value, and the number and value of negroes.

4. Who is keeping the hotel at this time? Who is in possession of the furniture and negroes? Where do Collins and his family live, and what now are their occupation?

5. State if the same furniture and negroes that Collins left at Citronelle, when he left the State with his family for Texas, are not now at Citronelle, and in the possession of the plaintiff.

6. Do you know, or can you set forth any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Defendants' Solicitors.

Filed 17th January, 1857. GEO. E. HOLT, *Clerk.*

Objections, etc. and cross-interrogatories filed by complainant to said witness.

The complainant objects to the 5th direct interrogatory as leading, and to all of them as immaterial and irrelevant, and without waiving objections, files the following cross-interrogatories to the said witness:—

1. Are you not now, or have you not recently been, in possession of the house referred to at Citronelle, taking care of it until it could be otherwise rented or sold?

2. Is not Mr. Collins desirous of selling said house, and has he not been so for some time? Has he not offered it at $3,000, on one, two, and three years' credit? Has he not offered it on those terms to Mr. Alford, the former tenant? Has he not also offered it at the same price to George L. Pearce?

3. Is not the said property worth a much larger sum to a person who would keep it in a proper condition as a hotel?

5. Did not this property cost Mr. Collins $5,000?

6. Was not said house built for a hotel? Has it not been occupied as such? Was it not so occupied by Mr. Griffin? Is not the furniture in it the same that was in it as a hotel?

7. Was not said house used as a water-cure establishment, under the charge of Dr. Coyle, and was not Mrs. Collins, the plaintiff's wife, then as a patient in said water-cure for some time?

7. Is not Mrs. Collins in bad health, and has she not been so for some time—for some years? Is she not supposed to have consumption? Is not the climate of San Antonio, in Western Texas, sup-

posed to be more favorable for such persons than the climate of Mobile? Is not that the opinion of Mr. Collins and his wife?

8. Does not Mrs. Collins's mother and sisters live in Western Texas? Was not Mrs. Collins a native of Texas, and brought up there, and does she not prefer to live there?

9. Is not Mr. Collins's family limited to his wife and daughter? How old is his daughter? Where is she now?

10. Was not this daughter recently brought on from Texas, for the purpose of sending her to school, and did not Mrs. Collins come with her, in order to be with her as much as possible, and to prepare her for going to a boarding-school? And is not this daughter now at the "Judson Institute" at Marion?

11. When did Mr. Collins, his wife and daughter, arrive at Citronelle from Texas? When did Mr. Collins leave with his daughter for Marion? When did Mr. Collins return from Marion, and when did he and his wife then leave Citronelle? Where did they declare their intention of going?

12. Is not Mr. Collins's visit to Mobile solely on account of disposing of the Citronelle House, placing his daughter at school, and attending to the taking of testimony in this suit? If his presence in this State is for any other purpose, please state what it is.

13. When was the Citronelle Hotel, to which reference has before been made, built, by whom, and for what use? How many rooms are there in it? Is it fitted for a hotel?

14. What is its location? Is it not close by the railroad depot? Is it a suitable and desirable place and house for a private residence for a small family like Mr. Collins's, and had he any other intention in purchasing it than establishing a permanent water-cure establishment?

K. B. SEWALL,
Of Counsel for Compl't.

Filed 4th February, 1857. GEO. E. HOLT, *Clerk.*

No. 31. *Deposition of Harvey Williamson.*

The said witness, in answer to the aforesaid direct and cross-interrogatories, says, on oath:—

1. I know the complainant, and Drury Thompson, one of the defendants.

2. I know the property inquired of, which was owned by complainant, and kept as a hotel. Have known it for about three years. Was first occupied by the complainant some two years ago this last summer. He left Citronelle with his family for Texas some time in the fall of 1855, I think about September. I know that he and his family were in Citronelle in December, 1856. They arrived in Citronelle on the 10th December, and in Mobile some days previous to that. I do not know, of my own knowledge, whether they were absent in Texas all the time from the fall of 1855 to December, 1856, or not.

3. He did leave his furniture and negroes. I should suppose the furniture he left was worth at least three hundred dollars. All the

negroes I know of his leaving were three in number: a boy, worth about $1,000, and an old man and his wife, worth about $300 apiece.

4. I was in possession of the hotel, for Mr. Collins, on the 17th January, 1857, the date of these interrogatories. I had the negroes and furniture in possession, to take care of them and the house until Mr. Collins disposed of them and it some way or other. Mr. Collins and his family lived at this place some four or five weeks from the 10th December, 1856. They stayed at the hotel, and took in travellers, as had been done before.

5. The furniture and negroes were at Citronelle, in the possession of plaintiff, until within a few days ago, when he sold the property to Mr. James L. Childress, and gave him possession; that is, of the house and furniture. He has taken the negroes away with him since the sale to Mr. Childress.

6. I believe I have answered all I know of the matters in issue in this suit.

Answers to Cross-Interrogatories.

1. I have so been until recently.

2. Mr. Collins has sold it, and I believe for $3,000, though I do not know how or when the payments are to be made. I know he did offer to sell to Messrs. Pearce & Alford for $3,000, but do not know as to the terms of payment he offered.

3. I should not think it was worth more than $3,000.

5. I have heard both Mr. Griffin (from whom Mr. Collins purchased) and Mr. Collins himself say that he gave $5,000 for it.

6. To the whole of this interrogatory I answer yes.

7. To this I also answer yes.

7. I have known Mrs. Collins about 2 years, and her health during that time has been bad. Have heard her say that she has had one or two hemorrhages. I know nothing, of my own knowledge, of the climate of San Antonio. I have heard Mr. and Mrs. Collins say that it agreed with her better than the climate of Mobile.

8. All I know of this is from information derived from Collins and his wife; from this information I answer yes.

9. Mr. Collins's family consists only of his wife and daughter; the latter is about thirteen years old, and is now at school at Marion, Ala.

10. I have heard Mr. and Mrs. Collins say that such was the case, and I believe she is now at Marion, at school.

11. They arrived on the 10th December. He left somewhere about the 6th January for Marion with his daughter. He returned from Marion about the 17th January, and he and his wife then left about the 22d of January, and declared their intention of going to Texas, after remaining a few days in Mobile.

12. All I know of the object of his being here is from what he told me. He has told me often, that he had come on business, and did not intend to remain.

13. Said house, I think, was built about four years ago for a hotel, by Messrs. Pope and Griffin; it has some 16 or 17 rooms, and if it were completed would be fitted for a hotel.

14. It is close by the Railroad Depot; should think it was too large for a small family residence. I think it was his intention when he bought it to establish a Water-cure establishment. Have often heard him say so. H. WILLIAMSON.

The foregoing deposition of Harvey Williamson was taken, subscribed, and sworn to, at the city of Mobile, on the 12th day of February, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in said cause, and filed 7 April, 1857.

GEO. E. HOLT, *Clerk.*

No. 32. *Interrogatories to be exhibited to William J. Kennedy, Esq., a Witness on behalf of the Defendants in said cause.*

1. Where do you reside? What is your profession? Have you had an office in Mobile for the past two years? If so, where has it been? How near to that of K. B. Sewall, Esq.?

2. What opportunity have you had of knowing whether, during said time, or any part of it, any one stayed or lived, or kept his place of business in said Sewall's office?

3. Do you know Sidney E. Collins? If so, how long have you known him? What has been his place of business for the past two years, or during most of said time? Where has he kept his office? Where his books and papers?

4. How much of his time has Collins spent in Mobile for the past two years or more? Where has been his place of business or headquarters when in Mobile? Where has he dwelt? With whom has he usually come to town in the morning, and with whom has he gone out at night? Where does K. B. Sewall, Esq. live, in or out of the city? How is it his custom to go home when he leaves his office for home, and who has usually gone with him for the past two years, or part of that time? If you have heard Collins say anything in reference to his, or his family's staying at Sewall's, state it fully.

5. State any and every fact you may know, tending to show that Collins has been staying at Sewall's residence and office, and that Sewall has kept Collins under his eye.

6. Do you know of Collins' family having been in Mobile for the past two years? If so, where have they stayed?

7. State anything else you may know that will benefit either party as fully and particularly as if you were specially interrogated about the same. CHANDLER, SMITH & HERNDON,

Sol'rs for Defendants.

Filed 16th December, 1856. GEO. E. HOLT, *Clerk.*

Objections, etc., and Cross-Interrogatories filed by the Complainant to J. Wm. Kennedy, to wit:—

Complainant objects to the direct interrogatories to the said wit-

ness as impertinent and irrelevant, and, without waiving the same, files to the said witness the following cross-interrogatories:—

1. If, in answer to the direct interrogatories, or any of them, you have stated the place of business of Sidney E. Collins, please state what the business of said Collins is; or whether you have ever known him to carry on any business whatever.

2. Have you ever known Sidney E. Collins to keep his desk, his books, or his papers, in the office of K. B. Sewall?

3. Has K. B. Sewall, so far as you know or believe, ever had anybody's books, furniture, or papers, in his office except his own? If so, specify what and whose.

4. So far as you know or believe, has the intercourse between K. B. Sewall and Sidney E. Collins ever been other than that of attorney and client?

5. Have you ever known Sidney E. Collins to be at the office of K. B. Sewall on any other business than that connected with this suit, and has his calls or consultations been more frequent than the magnitude of his cause required?

6. Has K. B. Sewall, to your knowledge or belief, exerted, or tried to exert any influence over Sidney E. Collins in the commencement and prosecution of this suit, or either, other than what would result from a statement of his opinions as to the law and equity of the case? If yea, set forth the facts, or the grounds of your belief.

7. In the interviews between K. B. Sewall and S. E. Collins have you ever seen anything that looked like control, surveillance, or "keeping under the eye." On the part of said Sewall, or on the one side, or on the other, have you seen anything tending to that, either in the intercourse or conduct of either of said persons? If so, set it forth fully and particularly.

8. If you know anything of the origin of this suit, do you not know that it was wholly unsolicited by K. B. Sewall, and that he knew nothing of the matters involved in it until they were laid before him by Mr. Collins in writing, and he was requested to undertake it in connection with Mr. Taylor?

9. Did not Mr. Sewall's family leave Mobile for New York on the "Quaker City," last May, and have they not been absent the entire summer and autumn?

10. Was not K. B. Sewall himself absent from Mobile from the latter part of May last, to the latter part of June, in attendance upon the Supreme Court at Montgomery?

11. Do you know the family of Mr. Collins? And if you state that they have been in Mobile for the last two years, or any part of said time, state how you know it, or from whom you derive your information as to when and where they stayed, and what were their movements and intentions.

K. B. SEWALL,
Of Counsel for Complainant.

Filed 29th December, 1856. GEO. E. HOLT, *Clerk.*

No. 32. *Deposition of Wm. J. Kennedy.*

The said witness, in answer to the aforesaid direct and cross-interrogatories, on oath, says:—

1. I reside in Mobile, and practise law. Have had an office for the past two years in the Savings Bank Building, adjoining that of K. B. Sewall's.

2. My opportunities for knowing the facts inquired of, have been only such as the proximity of the offices afforded.

3. I have known Sidney E. Collins for about a year, and during that period have very frequently seen him in the office of K. B. Sewall. I do not know that he has had any business which required an office, or any books and papers which required a place of deposit.

4. I have known Collins only about one year, during a greater part of which, I think, he has been in Mobile. I have most frequently seen him at Sewall's office. All I know of his residence has been learned from himself. A part of the time he lived, I think, at a Mr. Vicker's in the city of Mobile; a part at Cottage Hill with a Mr. Lewis, and a part at K. B. Sewall's house. My impression is, that Collins frequently came to town with K. B. Sewall in a buggy in the morning, and returned with him in the evening during his residence at said Sewall's house, which I am informed is located some three or four miles from town. I have heard Collins say, that he and his family were residing at K. B. Sewall's, and have heard him refer to incidents which transpired there.

5. As already stated, all I know of Collins' residence is derived from himself, during his stay in Mobile. Within the period of my acquaintance with him he has been habitual in his attendance at Sewall's office. When Sewall was in Mobile they usually came there together and left there together. When Sewall was absent, Collins carried the key of his (Sewall's) office, and answered to calls of business on Sewall. The intimacy between them was certainly very great; but which was the ruling spirit, in matters outside of their professional relationship, I cannot say.

6. I have answered this fully in my answers to preceding interrogatories.

7. I know nothing further in answer to the matters inquired of in these interrogatories.

Answers to Cross-Interrogatories.

1. I have not stated that Collins had any place of business, or carried on any special business.

2. I have seen Collins take papers out of a desk in Sewall's office, and replace them there; the desk I knew to be Sewall's; whether the papers were or not, I cannot say.

3. I do not *know* that Sewall "ever had anybody's books, furniture, or papers, in his office except his own."

4. My observation has been too limited of the intercourse of men

to adventure more than a timid opinion in answer to this interrogatory; but I think the association between Sewall and Collins has been more intimate than usually exists between attorney and client.

5. I do not know that Collins was at Sewall's office "on any other business than that connected with this suit," or whether "his calls or consultations were more frequent than the magnitude of his cause required;" but they seemed, for a length of time, to be joint occupants of the office.

6. I have neither "knowledge" or "belief" about any influence exercised by Sewall over Collins in reference to this suit, save that which rests upon floating impressions too vague to deserve the name of testimony. I think this interrogatory, to say the least, a very singular one.

7. I think that Sewall's influence over Collins was very great; derived, no doubt, from the implicit confidence of the latter in the character and superior intelligence of the former; that this influence was ever exerted by Sewall for any purpose beyond the proper management of the suit, or unduly, I do not know; I know nothing of any "surveillance, or control, or keeping, under the eye."

8. I know nothing of the origin of this suit except through the statement of persons not parties to it.

9. I have been informed, and believe, that Mr. Sewall's family did leave for New York about last May, and were absent the entire summer and autumn.

10. I believe that K. B. Sewall was absent from Mobile at the time mentioned for several weeks, perhaps a month, in attendance upon the Supreme Court.

11. I do not think I am acquainted with the family of Mr. Collins. All I know about them, "their residence, movements, or intentions," as already stated, is derived from himself.

W. J. KENNEDY.

The foregoing deposition of Wm. J. Kennedy was taken, subscribed, and sworn to, at the city of Mobile, on the 31st day of December, 1856, before Richard B. Owen, Esqr., a commissioner appointed to take depositions in the said cause.

Filed 7 April, 1857. GEO. E. HOLT, *Clk.*

No. 33. *Interrogatories to Edward A. Lewis and William Vickers, witnesses on behalf of the Defendants in the above entitled cause.*

1. Do you know the plaintiff, and how long have you known him, and when did he move from Texas to Mobile County? Where did he live after his removal to this county? Did he own and does he still own a house and lot near Spring Hill, in this county?

2. When did he move to Citronelle, and how long did he and his family remain there?

3. When did he return from Texas in 1855? Did his family return with him? Where did Collins stay during the winter and spring of 1856. Did he and his family, or did he live, at K. B.

Sewall, Esqr., during that year? If so, state how long, to the best of your knowledge and belief.

4. When did they return (in what month) to Texas, in 1856? When did Collins return to Mobile during this winter? Was it in November or December, or earlier in the fall? Did Mrs. Collins and his child or children return with him?

5. Where have they been living this winter, to the best of your recollection, knowledge, and belief?

6. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the issue fully and at large in your answers.

CHANDLER, SMITH, & HERNDON,
Defendants' Solicitors.

Filed 31 January, 1857. GEO. E. HOLT, *Clerk.*

Objections and Cross-Interrogatories filed by the Complainant, viz:—

The complainant objects to the interrogatories filed to said witnesses by the defendants, as irrelevant, and impertinent, &c., and files the following cross-interrogatories:—

1. How long have you known Mrs. Collins? What is her general health? Is she not supposed to be consumptive?

3. Do not her mother and sisters live in Western Texas? Does she not prefer to be near them? Does she not prefer the climate of San Antonio? Is it not considered a better place for persons who have pulmonary affections than Mobile?

4. Is not Mrs. Collins at times hysterical, and does not the absence of her husband from her greatly affect her health? Is not this the principal reason why Mrs. Collins came on with her husband last November? And was his visit any other than temporary, and because it was required by his business?

5. Did not Mr. Collins come on to Mobile for the purpose of placing his daughter at school, of disposing of some property, and of attending his counsel in the preparation of this suit for trial? If you know of any other object or intention, please set forth the same fully.

6. Have not all the visits made by Mr. Collins to Mobile since this bill was filed been temporary, and such as his business here required of him?

7. If Mr. Collins and his wife and daughter have been at the house of K. B. Sewall, state, if you know, how long they were there, and under what circumstances. Were not the family of Mr. Sewall absent at the north, and was not Mr. Sewall himself absent most of the time at the Supreme Court, and did not Mr. Collins and his family leave for Texas in a few days after Mr. Sewall's return? Did they not leave early in July? Were they at Mr. Sewall's over five weeks? State if you know when they went there and when they left.

8. Were not Mr. Sewall's family absent from the 15th May—the sailing of the Quaker City—until in December last? And was not he absent during June? Is not his house large and commodious, and would it not be safer in charge of Mr. Collins for a short time than in the charge of servants.

9. In inviting Mr. Collins and his wife and daughter to occupy his house for a short time in summer, and during the absence of his own family, was Mr. Sewall doing any impropriety, or anything indicating control over Mr. Collins, on his part, or anything indicating undue influence?

10. Or was there, in such occupation, on the part of Mr. Collins, anything indicating an intention of making Mobile his residence or permanent home, or of changing his citizenship from Texas to Alabama? State all you know of his intentions as to citizenship.

11. Since Mr. Collins removed to Texas, has he, to your knowledge or belief, done any act indicating any intention of making Alabama his residence? Has he voted at any election, served on any jury, or claimed any of the distinctive rights or privileges of a citizen of Alabama? If yea, specify and set them forth.

12. Has not Mr. Collins for the last two years been anxious to dispose of his property in the vicinity of Mobile? Has he not repeatedly offered his Citronelle house at a sacrifice, and has he not recently effected a sale of it, at a loss of some two thousand dollars?

13. Why did Mr. Collins purchase the Citronelle house of Mr. Griffin? Was not Mrs. Collins and Mrs. Vickers both there as water-cure patients in 1854? When Mr. Griffin had charge of it, and when Mr. Griffin's wife died, was not Mrs. Collins in what the water-cure physicians term "the critical action?" Did not Mr. Griffin propose breaking up the establishment, and to avoid this, and to have his wife's cure continued, did not Mr. Collins purchase the place, and design it to be used as a permanent water-cure establishment, and were not those the only motives that influenced him? If you know of others, set them forth.

14. After Dr. Coyle left Citronelle, was he not succeeded in the establishment by Dr. Myer, as a water-cure physician? Was not Mrs. Collins under his treatment till near the time that Mr. Collins removed to Texas?

15. Has not the daughter of Mr. Collins been placed at school at the Judson Institute at Marion? When was she taken there and by whom? Where are Mr. and Mrs. Collins now?

16. So far as you know, have not the acts of Mr. and Mrs. Collins been in pursuance of their declared intentions? And have they not now returned to Texas because they have accomplished the objects they had in view in visiting Mobile? If it is otherwise, set forth all that you know, showing their intentions as to their citizenship for the last two years.

K. B. SEWALL,
of Counsel for Compl't.

Filed 9th February, 1857. GEO. E. HOLT, *Clerk.*

No. 33. *Deposition of Edward A. Lewis.*

The said witness, in answer to the foregoing direct and cross-interrogatories, says, on oath:—

1. I have known the plaintiff for more than 20 years. He moved from Texas to Mobile County with his family in the spring or summer of 1851. He lived at the house of Mrs. Margaret Lewis, near Spring Hill, as a boarder, until some time that fall, when he went to the house of Wm. F. Cleveland, as he informed me, and in a short time he moved back into the house of Mrs. Lewis, and remained there until some time in the early part of that winter. He then moved about a mile north of Mrs. Lewis', where he did own a house and lands, but does not own it now, having sold it.

2. He moved to Citronelle some time in the spring or summer of 1854; cannot say how long he remained there; think it was one year, more or less.

3. I think in November or December. His family at that time did not return with him. Do not know where he made his home during the winter of 1856. I generally saw him in the city of Mobile. I think his family returned from Texas some time in March, 1856. I believe they lived at Mr. Vickers' for a short time; and some time later in the spring Mr. Collins informed me that he and his family were staying at the house of K. B. Sewall for a short time, as Mr. Sewall and family were absent, and that, as soon as Mr. Sewall returned, he and his family would go back to Texas; and I believe it was some time in the latter part of June, or some time in July, that he and his family left for Texas.

4. As well as I remember, in June or July; and, I think, he returned to Mobile some time in the fall of 1856, and remained here a short time and returned to Texas, and then brought with him his wife and daughter, as he said, for the purpose of placing his daughter at school.

5. I don't know, of my own knowledge, where Mr. Collins has been living this winter. I first saw him, his wife and daughter, at the house of Mr. Vickers, in the city of Mobile, in the early part of this winter, and he informed me that he would board in the city or at Citronelle for a short time, until he could place his daughter at school, and afterwards he informed me that he was boarding at Citronelle, and, a short time before he left for Texas, he informed me that he was boarding in the city of Mobile.

6. I do not think I know anything further of interest to the issue in this cause.

Answers to Cross-interrogatories.

1. Have known Mrs. Collins since the spring and summer of 1851. Her health is bad. Whether she is consumptive or not, I cannot say.

2. I have been informed that her mother and sister live in Texas. As to her preferences for residence, I know nothing.

4. Mrs. Collins is very restless in the absence of her husband, and, from information I have derived from Mr. Collins, his visit here in November or December, was on business.

5. Mr. Collins informed me that he intended placing his daughter at school, and also that he wanted to sell his country property.

6. I do not know the objects of his visits.

7. All I know of his being at the house of K. B. Sewall is from information derived from Mr. Collins. He told me, as far as I remember, that he was there from some time in May until June or July. He told me they merely occupied the house during the absence of Mr. Sewall and family. He told me that they would leave in June or July.

8. I know nothing of this.

9. I am not able to state anything of the matters herein inquired of.

10. I know nothing of his intentions as to citizenship except from information derived from himself, which was to the effect that Texas was his home and place of permanent residence.

11. I have no personal knowledge of the matters herein inquired of me.

12. Mr. Collins has frequently said to me, in the last two years, that he wanted to sell his property, and I know personally that he had recently sold his house and lands near Spring Hill. He also informed me, a short time before he left for Texas, that he had sold the Citronelle house for two thousand dollars less than he gave for it.

13. In answer to this I can only state, that from information derived from Mr. Collins himself, I learn that Mrs. Collins was at Citronelle, while Mr. Griffin had charge of the establishment, as a water-cure patient. Mr. Collins also informed me that, after Mrs. Griffin died, that he had purchased the establishment, for the purpose of making it a permanent water-cure establishment, because his wife was there under treatment.

14. I know nothing of this.

15. Mr. Collins informed me that he had placed his daughter at school, but I do not remember the place. I saw Mr. and Mrs. Collins a short time since on board a steamer at the wharf in Mobile, and they informed me they were on their way to Texas.

16. So far as I know their acts have been in accordance with their declared intentions. And further I have naught to say.

EDWARD A. LEWIS.

The foregoing deposition of Edward A. Lewis was taken, subscribed and sworn to, at the city of Mobile, on the 2d day of March, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 7th April, 1857. GEO. E. HOLT, *Clerk.*

No. 33. *Deposition of William Vickers.*

The said witness, in answer to the several direct and cross-inter-

rogatories propounded to him, deposes and says, on oath, as follows:—

1. I have known the plaintiff personally for three or four years. I do not know when he returned from Texas to this county. I understood from him that he lived near Spring Hill, in this county. He did own a house and lands near Spring Hill, at least he told me he owned it, but he told me also this last fall that he had sold it.

2. Early in 1854, Mr. Collins went with his wife, who was in bad health, to Citronelle, for the purpose of putting her under the water-cure treatment. Dr. Coyle had an establishment of this kind at Citronelle, in the hotel kept by Mr. Griffin. Shortly after Collins arrived there Mrs. Griffin died, and Mr. Griffin, not being willing longer to keep the hotel, Mr. Collins, after some hesitation as to whether he should build a new hotel or buy the old hotel, concluded to adopt the latter course, and did so. Dr. Coyle remained there until fall, Mrs. Collins being still under his treatment, and then left, leaving at the place a Dr. Meyers, who continued the water-cure treatment for Mrs. Collins until early in 1855, when Mr. Collins leased the hotel to Black & Alford, and, with his wife, went to Texas. They remained in Texas until late in the winter, when they returned and boarded with me here in Mobile for two months, when they went to K. B. Sewall's, Esq., to live. They remained with Mr. Sewall some six weeks, when they went to Texas again in July, I think. Mr. Collins returned again alone in October, I think. Mr. Collins returned to Texas for his family in November or December, 1856, and returned with *her* in a short time, and went up to Citronelle, where they remained a short time, about a month, then sold the place there, and, after a delay of a few weeks in Mobile, went back to Texas, where they now are.

3. They returned from Texas, to the best of my recollection, early in 1856. His family returned with him. He staid during that winter and spring of 1856 at my house and Mr. Sewall's. They staid at Mr. Sewall's some six weeks, probable, two months.

4. I think it was about July, 1856, that they returned to Texas. I think it was in October or possibly November that he returned. Mrs. Collins and his daughter did not then return with him.

5. This I have answered in my answer to second direct interrogatory.

6. I know nothing more of this matter than I have answered.

Answers to cross-interrogatories by the said witness.

1. Have known her for about three years. Her general health is very bad.

3. Have heard Mr. and Mrs. Collins say so. From the information I have derived from them, I should say to the remainder of this question, "Yes."

4. Mrs. Collins is nervous and hysterical, and I should think the absence of her husband would affect her. From information derived

from Mr. Collins, to the remainder of this interrogatory, I answer "Yes."

5. Mr. Collins so informed me, and his daughter is now at school in Marion at the "Judson Institute."

6. I have learned from him that such is the case.

7. They were, I think, at Mr. Sewall's about six weeks. Mr. Sewall's family were absent at the north, and Mr. Sewall himself most of the time was absent at Montgomery. They left for Texas in a very short time after Mr. Sewell's return.

8. To the whole of this interrogatory I answer "Yes."

9. Not that I know of.

10. Should think they were only there temporary. They have always given me to understand that Texas was their home, and that they preferred to live there.

11. He has not that I know of.

12. To the whole of this interrogatory I answer "Yes."

13. To this I answer "yes." He bought for the purpose of having his wife keep under the water-cure treatment, and of keeping up a permanent water-cure establishment, until she recovered her health.

14. Yes.

15. She has; she was taken there a few weeks ago by her father. Mr. and Mrs. Collins are now in Texas.

16. To the whole of this I answer yes, so far as I know. I know nothing to the contrary.

WILLIAM VICKERS.

The forgoing deposition of William Vickers was taken, subscribed and sworn to, at the city of Mobile, on the twenty-first day of February, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 7th April, 1857. Att. GEO. E. HOLT, *Clerk.*

No. 34. *Interrogatories to be exhibited to Delphine Lewis, a witness on behalf of the defendants in the said cause.*

1. Do you know the parties? Are you acquainted with Mrs. Collins, the wife of the plaintiff?

2. Do you know what time of the year Mrs. Collins came to Mobile with her husband in 1851; was it in the winter, spring or summer? State to the best of your recollection and belief, was it before or after March.

3. Do you know, or can you set forth any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, SMITH & HERNDON,
Solicitors for Defendants.

Filed 4th March, 1857. GEO. E. HOLT, *Clerk.*

Objections, etc., and cross-interrogatories filed by the Complainant to the said Witness, to wit:—

The complainant objects to so much of the 2d direct interrogatory as requires the witness to "state to the best of her recollection and belief" as illegal; and files the following cross-interrogatories, viz.:—

1. Can you state anything more than this, that you first saw Mrs. Collins at a certain time in 1851?

2. Can you state of your own knowledge that Mrs. Collins made but one visit to Mobile in 1851?

3. Will you pretend to say of your own knowledge that Mrs. Collins did not come to Mobile prior to March, 1851?

K. B. SEWALL, *of Counsel for Complainant*,

Filed 24th March, 1857. GEO. E. HOLT, *Clerk.*

No. 34. *Deposition of Delphine Lewis.*

The said witness, in answer to the said direct and cross-interrogatories, says on oath:—

1. I am acquainted with the complainant, and with the defendant, Thompson. I know also Mr. Wm. F. Cleveland when I see him, but am not acquainted with Mr. James Campbell. I am acquainted with Mrs. Collins, the wife of the complainant.

2. Mrs. Collins came to Mobile with her husband in 1851, in the month of June. I know the fact, because I was at that time engaged in teaching a primary school, and two little daughters of Mr. and Mrs. Collins entered my school in that month a few days, probably, the next day after her and their arrival.

3. I know nothing more material to the issue in this cause than I have already stated in answer to the foregoing special interrogatories.

Answers to Cross-interrogatories.

1. I believe that she first came here in June, 1851, for Mr. Collins was here at my mother's house often in the spring previous to his going to Texas; and when he left (in April, I think), he told me he was going to Texas, for the purpose of bringing here with him his wife and family. I state positively that she came to Mobile in June.

2. Mrs. Collins only came to Mobile once during the year 1851 from Texas. They (the Collins's) told me that they had come here to make this their home. I accompanied them on a visit to Texas in the spring of 1852, in the month of April. They returned with me in the month of May.

3. I state that I know that Mrs. Collins did not come to Mobile prior to March, 1851. DELPHINE LEWIS.

The foregoing deposition of the witness, Miss Delphine Lewis, was taken, subscribed, and sworn to at the residence of her mother, at Spring Hill, in Mobile County, on the 9th day of April, 1857,

before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause. Filed 7th April, 1857.

GEO. E. HOLT, *Clerk.*

The following depositions of A. M. Griffin, T. C. Coyle, Thaddeus Sandford, and C. A. Bradford, were taken by the complainant, who, on the trial, declined reading them, and they were here introduced by the defendants as testimony on their behalf in said cause, and read by them. Att. GEO. E. HOLT, *Clerk.*

No. 35. *Interrogatories to be administered to Archibald M. Griffin and T. C. Coyle, witnesses by and on behalf of the complainant in the said cause.*

1. Do you know the complainant? Do you know the Citronelle House, at Citronelle, above Mobile?

2. Who built said house? How is it situated? When, and for what purpose was it built? How many rooms has it?

3. How has said house been occupied ever since it was built? For what business and purpose, and by whom?

4. When did the complainant purchase it? Why and for what purpose did he purchase it, and how has it been occupied since?

5. What price did the complainant pay for said establishment, and what was embraced in his purchase, the land and buildings only, or the furniture in addition?

6. How long after the complainant purchased said place did he offer to sell it? At what price has he offered it? Has he been able as yet to sell it or not?

7. Do you know Mrs. Collins, the complainant's wife? If yea, what is and has been the state of her health? What is it now? What medical treatment has she been receiving for the last few years?

8. Was the Citronelle House ever used as "a Water Cure?" If so, when and how long?

9. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

K. B. SEWALL,
Of Counsel for Complainant.

Filed 24th January, 1857. GEO. E. HOLT, *Clerk.*

Cross-interrogatories filed by the defendants to the said witnesses, to wit:—

1. How long have you known complainant?

2. What was the house and lot at Citronelle valued at when Collins purchased it, and what was the furniture? What was given for the property, and state the terms of sale—were they cash or credit, and what credit?

3. Where had Collins been living before he went to Citronelle? Did he own a house and lands near Spring Hill? Does he own them still?

4. When did Collins purchase the Citronelle property? How long did he occupy it? Did he take and receive boarders? Did he not use and occupy it for some time before he went to Texas as his residence?

5. When did he leave with his family for Texas? Was Mrs. Collins's health better than it had been? Was it or not improving under the treatment she had received? Did you not so advise and inform Mr. Collins, and tell him his wife would improve more at Citronelle than in Texas?

6. Was Citronelle a healthy and pleasant place? Was the house a comfortable one, and did the health of Mrs. Collins require her to be removed to Texas?

7. When did the plaintiff, after leaving Citronelle in 1855, go to Texas? When did he return to Mobile? How long did he remain in Mobile? When did he again go to Texas? When did he again return to Mobile? Did Mrs. Collins and his children come with him, and how often? How long have they been in Mobile County during this winter? Where have they been staying? Have they been at Citronelle? Have they been occupying their house there? Answer each one of these questions to the best of your knowledge, recollection, and belief.

8. Relate all you know that will benefit the defendants, as fully and particularly as if you were interrogated thereto.

CHANDLER, SMITH & HERNDON, *Defendants' Solicitors.*

Filed 31st January, 1857. GEO. E. HOLT, *Clerk.*

No. 35. *Deposition of Thomas C. Coyle.*

The said witness, in answer to the said direct, and cross-interrogatories, says, on oath:—

1. I do know the complainant and the Citronelle House.

2. He says it was built for a hotel by Col. Griffin, on the left-hand side of the railroad, and about a hundred yards from the track. I do not know when, or for what purpose it was built. It contains 16 or 18 rooms.

3. It was occupied from March, eighteen hundred and fifty-four, as a Water Cure Hospital, till the first of November of the same year. Do not know how occupied previously. For three weeks after the first date before mentioned, it was superintended in its hotel arrangements by Col. Griffin, who was, after the lapse of that time, succeeded by Sidney E. Collins. There is an impression upon my mind, that Mr. Tyler, Col. Griffin's son-in-law, occupied it between the outgoing of Griffin and the incoming of Collins, exercising the same supervisory care over the hotel arrangements.

4. On or about the first of June, eighteen hundred and fifty-four, for the purpose of having the hydropathic system of treatment ap-

plied to his wife. I do not know how it has been occupied since November of that year.

5. He was to pay five thousand dollars for the lands, house, and furniture.

6. About three months and a half. He offered it to me for four thousand dollars. I think it is not yet sold.

7. The state of her health is now bad. When Collins took possession of the hotel it was very bad; it improved under my treatment during the three months that preceded her going to Texas, and while there it again became seriously impaired by relapse. The hydropathic treatment.

8. This is answered in reply to third interrogatory.

9. I know nothing further.

Answers to Cross-interrogatories.

1. Since the first May, 1854.

2. The house and lot were valued at four thousand dollars, the furniture and plate at one thousand dollars; five thousand dollars were given on credit, and my impression is one year's time was given on the whole amount.

3. I do not know.

4. In the summer of 1854, from June till November of that year, he did take boarders; did use and occupy it for some time before he went to Texas as his residence.

5. About midsummer 1855, but have no distinct recollection; it was better, improving exceedingly. I did so advise him, and say her health would improve more at Citronelle than in Texas.

6. It was. It was not comfortable; her health did not require such removal.

7. Cannot say precisely when, but perhaps June, 1855. About June, 1856, he returned to Mobile; do not recollect how long he remained. He again went to Texas about middle of September same year; do not remember when he returned again. Upon his first visit Mrs. Collins and his daughter came with him; upon the second, Mrs. Collins only, who has since left, I cannot say how long. Part of the time at Citronelle, and part at Mrs. Green's, on St. Michael Street, Mobile. Do not know whether they occupied house at Citronelle.

T. C. COYLE.

The foregoing deposition of Thomas C. Coyle was taken, subscribed, and sworn to, at the city of Mobile, on the 15th day of March, 1857, before A. J. Requier, Esq'r., a commissioner appointed to take testimony in the said cause.

No. 35. *Deposition of Archibald M. Griffin.*

The said witness, in answer to the aforesaid direct and cross-interrogatories, says on oath—

1. I know the complainant and house at Citronelle.

2. I built it, on the west side of the railroad near the depot, in 1852 and '53, for a hotel, sixteen or eighteen rooms.

3. Occupied from its completion to June, 1854, by William K. Tyler as a hotel, then by Collins as a hotel and Water Cure Hospital till about the latter part of spring, 1855, then by Black & Alford as a hotel till October, 1855, then by P. S. Graves as a school for some three months.

4. In June, 1854, for a Water Cure Hospital; the remainder of the question is already answered.

5. He paid me five thousand dollars for the land, building, and furniture.

6. About two years after purchase to my knowledge; since then he offered it to me for three thousand dollars. I learn from him and others that it is now sold, but have no knowledge of the fact otherwise.

7. I do—very bad. Now bad, but better than it has been. The water cure treatment.

8. This question is already answered.

9. I know nothing further.

Answers to Cross-interrogatories.

1. From 1854.

2. No discrimination was made between the house and furniture, but the whole was sold for five thousand dollars. The house and lot were worth about four thousand dollars, and the furniture and plate about one thousand dollars. The terms were one-fifth in cash, and the remainder at one, two, three, and four years.

3. I do not know.

4. In 1854, near a year. He did take boarders, and occupy it as a residence some time before he left for Texas.

5. Some time in 1855 her health had improved at Citronelle, but about the time of the departure for Texas my impression is she was worse. I did not so advise Mr. Collins.

6. It was a healthy and pleasant place, tolerably comfortable, but not entirely finished. The remainder of this interrogatory I cannot answer, having no knowledge.

7. My impression is he went in the fall of 1855. Some time in the spring of 1856. A few months. In the summer of 1856, Mr. Collins and his daughter came with him both times. Three or four months. Staying part of the time at Citronelle and part in the city. While at Citronelle they occupied their house as Collins told me.

8. I know nothing further. A. M. GRIFFIN.

The foregoing deposition of Archibald M. Griffin was taken, subscribed, and sworn to, at the City of Mobile, on the 15th day of March, 1857, before A. J. Requier, Esq., a commissioner appointed to take testimony in the said cause. And the said depositions of

Thomas C. Coyle and Archibald M. Griffin were filed in my office on the 16th day of March, 1857.

Attest, GEO. E. HOLT, *Clerk.*

No. 36. *Interrogatories to be administered to Thaddeus Sandford and Charles A. Bradford, witnesses on the part of the Complainant in the said cause.*

1. Please to state whether you were connected with the Mobile School Commissioners in the year 1854; if yea, did you hold any office therein, and what? What is your present occupation or office?

2. Do you know Sidney E. Collins, the above named complainant? State whether he was a member of the said Board of Mobile School Commissioners at the time above mentioned, or if at any time a member; whether he is so still, or when he ceased to be such, and why. Set forth all you know as to his resignation, and the cause of it, and whether it was accepted, and when.

K. B. SEWALL, *of Counsel for Compl't.*

Filed March 28th, 1857. GEO. E. HOLT, *Clerk.*

Cross-interrogatories filed by the Defendants to said witnesses.

1. When was the last time the plaintiff met with the commissioners?

2. If you state why the plaintiff ceased to be a member of the board, state from whom you derive your information or learned the reasons; was it from the plaintiff himself?

3. The witnesses will only state what they know, not what they heard from the plaintiff. They will also state when the plaintiff left for Texas in 1855, and when he returned.

4. State all you know that will benefit the defendants.

CHANDLER, SMITH & HERNDON,
Defendants' Solicitors.

Filed 9th April, 1857. GEO. E. HOLT, *Clerk.*

No. 36. *Deposition of Charles A. Bradford.*

The said witness, in answer to the foregoing direct and cross-interrogatories, says on oath—

1. I was connected with the said Commissioners in 1854 and 1855. I held the office of Secretary and Collector of the Board. I was elected in November, 1854, and have held that office from that time to the present time.

2. I know Sidney E. Collins very well. He was elected in August, 1852, at the general election, a member of the said board. He continued a member of the board until May, 1855. He then resigned his office of said Commissioner. His letter of resignation is dated May 22d, 1855, a copy of which is hereto annexed, marked Exhibit A, and which is a true copy from the original on file in this office, and which said original is in Collins's handwriting. His resignation

was acted on July 17th, 1855, and accepted by the said board. I know no other cause than that assigned in his said letter and what he told me personally, namely, that he was going to move to Texas, and had to resign.

Answers to Cross-Interrogatories.

1. I have no recollection on the subject. The minutes of this board show, that the last meeting he attended was December 21st, 1854. I am certain they are correct.
2. I learned the cause first from his letter of resignation, and afterwards from conversations with him.
3. I do not know when he left or returned.
4. I know nothing.

C. A. BRADFORD.

Exhibit A.

Mobile, May 22d, 1855.

T. SANFORD, ESQ., President of the Board of School Commissioners of Mobile County.

DEAR SIR: Having decided to remove to the State of Texas, my former residence, and being about to leave with my family, I am under the necessity of resigning my position as a member of the Board of Mobile School Commissioners, and I beg you to tender this as my resignation to the board, and to express my regret at being obliged thus to quit associations and labors, that I have ever found agreeable as well as useful to myself, if not profitable to others. Trusting that the cause of public education may always find in yourselves and your successors in Mobile, ample support,

I remain respectfully, your obedient servant,

SIDNEY E. COLLINS.

Copy.

Attest. C. A. BRADFORD,
Secretary Board of School Commissioners.

(Exhibit A.) I certify this is copy furnished.
LEONARD F. SUMMERS, [SEAL.]
Commissioner.

At the examination of C. A. Bradford in the annexed case, this paper was produced by him, and testified to by him as referred to in his answers annexed before me.

As witness my hand and seal.

LEONARD F. SUMMERS, [SEAL.]
Commissioner.

The foregoing deposition of Charles A. Bradford, was taken, subscribed and sworn to at the city of Mobile, on the 11th day of April, 1857, before Leonard F. Summers, Esq., a commissioner appointed to take testimony in the said cause.

No. 36. *Deposition of Thadeus Sanford.*

The said witness in answer to the aforesaid direct and cross-interrogatories, says on oath.

1. I was connected with the Board of School Commissioners in the years 1854 and 1855, and was President of that board. My present occupation is the collector of customs for the United States.

2. I know Sidney E. Collins, and that he was a member of said board during the years 1854 and 1855. My impression is, he ceased to be a member during the latter part of 1855. He is not a member of said board at this time. I do not know why he ceased to be a member. I understood his business took him to Texas. I cannot answer particularly as to time without reference to the records.

Answers to Cross-Interrogatories.

1. I do not remember.

2. I have no particular recollection about the same. I never had any particular conversation with the plaintiff about the matter.

3. I do not remember when he left for Texas; as to his return I recollect to have met him some ten or twelve months ago in Mobile. I do not think he remained long. I did not see him again until within the last two or three weeks.

4. I know nothing about the matter further, or I have no knowledge on the subject further than I have stated.

T. SANFORD.

The foregoing deposition of Thadeus Sanford was taken, subscribed and sworn to at the city of Mobile, on the 10th day of April, 1857, before Leonard F. Summers, Esq., a commissioner appointed to take depositions in the said cause. And the said depositions of Charles A. Bradford and Thadeus Sanford, were filed in my office on the 13th day of April, 1857.

Attest: GEO. E. HOLT, *Clerk.*

No. 37. *Interrogatories to be exhibited to Douglas Campbell, a witness on behalf of the defendants in the above entitled cause.*

1. Do you know the parties to this suit? Is James Campbell any relation of yours? If so, what?

2. Do you know certain real estate in Mobile known as the property recovered in the name of Sidney E. Collins, from the estate of Joshua Kennedy, dec'd? If so, describe it.

3. Do you know of any improvements made on said real estate? If so, describe the same, and state by whom, and under whose supervision and control they were made, and when they were made.

4. Do you know of any action by Sidney E. Collins and Wm. F. Cleveland, in reference thereto? If so, state all you know respecting the same.

5. If you know of any action by said Cleveland and Collins in reference thereto, state under what authority, and for whom they acted, or professed to act.

6. Do you know of said Collins and Cleveland's having kept any

books or papers in reference to said real estate? If so, what has become of the same? State all you know in reference thereto.

7. Did you at any time receive any money from said Collins, or from the proceeds of said real estate? If so, state the amounts, the sources of it, by whose authority the same was received, how it was paid out, or disbursed, and on whose account.

8. Do you know anything of services rendered, or money paid by James Campbell, in reference to said real estate? If so, state all you know about the same.

9. If you know anything of the state of the accounts between the parties, or any of them, in reference to said real estate at any time, state it.

10. Did Collins and Cleveland at any time, and if so, when, keep any office, and do any business together? If so, where was it kept, for what purpose, and what was the character of the business transacted?

11. State any fact with particularity you may know in relation to the dealings between the parties, or any of them, in reference to said real estate, and how, and under what authority they acted.

12. If you know any other matter or thing that will benefit either party to this controversy, please state it as fully and particularly as if you were specially interrogated about the same.

CHANDLER, SMITH & HERNDON,
Sol's for Defendants.

Filed 16th December, 1856. GEO. E. HOLT, *Clerk.*

Objections, etc. and cross-interrogatories filed by the complainant to the said witness, to wit:—

The complainant objects to the 12th direct interrogatory to this witness, as vague and unauthorized, and without waiving the said objection, propounds the following cross-interrogatories to the witness Douglas Campbell:—

1. Was not one thousand dollars advanced by James Campbell to William F. Cleveland, in the winter or spring of 1844, for the purpose of being paid to John A. Campbell, as a retainer in the case of Sidney E. Collins against Kennedy's heirs and executors? Did not such sum pass through your hands to said Cleveland about the time referred to? If so, state all that you know of such payment, whether of your own knowledge, or from information derived at any time from any of the defendants to this bill.

2. Do you not know that in 1844, James Campbell received a notice in writing, purporting to be signed by Sidney E. Collins, or on his behalf, to the effect that said Collins claimed to be the rightful owner of the land north of St. Louis Street and east of Royal Street in Mobile, and south of State Street, or some portion of it, and to be entitled to the rents or the back rents of the same, or some part of it? And have you not seen such notice, or heard it spoken of? If yea, state all that you know of such notice.

3. Do you not know that some notice in regard to rent was served

on James Campbell, in 1844, purporting to be on behalf of Sidney E. Collins? If yea, state all that you know, or have heard of it from any of the defendants, and its terms, purport and effect.

4. Was not James Campbell notified by the Branch Bank, in 1844, that the bank claimed of him the rents of the property north of St. Louis Street, which it had derived from Wm. F. Cleveland? State all that you know of such notice.

5. Prior to such notice from the Branch Bank, who received the rents of all said property? Was it not James Campbell?

6. Prior to the division of the real estate between the Branch Bank and James Campbell, who received the rents of the same? Was it not James Campbell?

7. Where were the improvements, referred to in the third direct interrogatory, made and completed? When were they commenced?

8. Did James Campbell advance any money to carry on the suit of Sidney E. Collins *vs.* Kennedy's heirs and executors, prior to the 15th of February, 1851? If yea, set forth at large and specifically all the money, and each sum he advanced, and state the date and amount of each payment and to whom made, and for what particular purpose, and at whose request.

9. Did James Campbell, prior to the 15th February, 1851, render any personal or other service to aid in the prosecution of said suit? If yea, set the same forth, and every such service rendered prior to that date, and when, and at whose instance it was rendered.

10. Did not James Campbell receive from Sidney E. Collins, the complainant, and from the estate which Collins recovered from the Kennedys, the sums of money, and at the times specified as follows, to wit:—

1851.			
Aug't 27.	Wharf rent, F. G. & Co., by note		666 67
Dec. 8.	" " cash		555 56
" 18.	140 feet timber used in *press*		9 80
" 24.	Wharf rent, F. G. & Co.		666 67
1852.			
Jan'y 7.	" "		666 67
Feb'y 10.	" "		674 33
Mar. 16.	Cash from Wm. Jones, Jr., on mortgage of Collins		5,000 00
" 18.	" S. E. Collins for costs		368 39
" 30.	" " for materials and labor		440 61
April 1.	" "		1,500 00
" 2.	" "		600 00
" "	" "		188 00
" 6.	" E. Toulmin, rent		30 00
" 30.	" Sands & Co.		125 00
May 21.	" pr. Cleveland "		864 00
		Amounting to	$12,355 70

11. And did not this amount, $12,355 70, exceed by $4,000, or nearly, all that James Campbell had paid for improvements and otherwise on the Collins property up to May 21st, 1852?

12. Except the sum of $368 39, advanced by James Campbell, April 3d, 1851, to D. Thompson, to pay costs, and which was specifically repaid by Collins on the 18th March, 1852, what sums has James Campbell ever advanced or paid for the purpose of prosecuting said suit of Collins *vs.* Kennedys? Specify the items, dates and amounts, and to whom, and for what paid, and at whose instance or request.

13. Was not the first item paid by James Campbell on account of improvements of said property, paid to Windham for timber, Aug't 20, 1851, amounting to $89 74? If not, state what it was, and the amount, and when, and to whom paid.

14. Did the complainant, Mr. Collins, prior to April, 1851, ever authorize or request James Campbell to pay any money for him, for any purpose whatever? If yea, set forth when, where, and how he was so authorized or requested, and on what account.

15. Do you know that Wm. F. Cleveland ever, before the termination of the suit of Collins *vs.* the Kennedys, paid anything for said Collins, or to aid in the prosecution of said suit? If yea, set forth what sums he so paid, and when and to whom, and for what purpose, and how you derived your knowledge or information, and from whom.

16. Have not the defendants, since the 21st May, 1852, received a large amount of rent from said Collins's property? Set forth how much they, and each of them have received since that time.

17. What amount of rent, or rent notes have been received for and on behalf of the defendants from said property for the years commencing the 1st November, 1855 and 1856? Set forth the amount for each year.

18. Did you not, during the last year, and from June, 1855, for and on behalf of James Campbell, request or urge Daniel Chandler to proceed to foreclose the mortgage made to him by the complainant to secure his fee notes, or to assign said mortgage to James Campbell, or for his benefit? And was not this done by the authority of James Campbell, or approved by him?

19. Set forth any item paid by James Campbell for building the wharf in 1851–2, and on account of improvements since made on said Collins' property, the date, amount, and to whom paid from June 1st, 1851, to May 21, 1852.

20. Do you not know that James Campbell and Wm. F. Cleveland desired and endeavored to get a new deed from the complainant for two-thirds of his estate recovered from the Kennedys, in place of, or in confirmation of that of February 15, 1851?

21. Do you not know that said Campbell and Cleveland, or one of them, wished and endeavored (during 1851–2, and till in December, 1853, or during some portion of said time) to get from the

complainant a deed of some kind relating to their claimed interest in his said estate?

22. Why was the deed of February 15, 1851, kept from record until 1853, and why were all the conveyances made to the purchasers of portions of said estate, made only by Collins and wife as grantors?

23. Who were the counsel and legal advisers of James Campbell, or of James Campbell and William F. Cleveland, in regard to their connection with the Collins property in 1851, 1852, and 1853, and the leasing and conveying of the same? Who advised that they should not join as grantors in the deeds to the purchasers, but should merely sign an assent and approval of the same?

24. When did James Campbell or Wm. F. Cleveland first hear that Mr. Collins intended to question the validity of the deed of February 15, 1851, or to deny their claim to the estate embraced in it, and when did they first employ counsel in the matter.

24. Did you not, in 1854, or early in 1855, hear William F. Cleveland say that Collins had employed Mr. Chandler, and that if there was to be a controversy, he would rather Collins would employ Chandler than any one else?

K. B. SEWALL,
Of Counsel for Complainant.

Filed 27th December, 1856. GEO. E. HOLT, *Clerk.*

No. 37. *Deposition of Douglas Campbell.*

The said witness, in answer to the foregoing several direct and cross-interrogatories, says on oath:—

1. I know the parties. James Campbell is my father.

2. I know the property inquired of, it is bounded on the west by Royal Street, south by St. Louis Street, east by the channel of Mobile River, and north by St. Anthony. There is also another lot bounded west by Royal Street, south by St. Anthony, east by Shippers' Press Warehouse, and north by State Street.

3. Improvements were made on said real estate. The first of the improvements consisted in rebuilding what was called the Collins property wharf, in 1851; and secondly, in building six large three story brick stores on the lot of ground first described by me in answer to *second* interrogatory. These stores were built in 1852 and 1853. The wharf, I believe, was rebuilt under the supervision and control of James Campbell and William F. Cleveland. The stores were built under the supervision and control of William F. Cleveland and Sidney E. Collins.

4. Sidney E. Collins and Wm. F. Cleveland acted together in concert about the building of the stores above spoken of, from their commencement to their completion. They went over the ground together, concerted plans together, made the contracts, and during the progress of the work exercised a joint control and supervision. William F. Cleveland, on account of his larger experience as a business man, had a more prominent part in the management of matters

but nothing was done by him without the full knowledge and consent of Collins. Both of them were very frequently about the buildings whilst they were in process of construction.

5. They acted for themselves, and for Drury Thompson, and James Campbell, and I think for William D. Primrose. They had a power of attorney authorizing them to act for these other parties. I do not know whether Primrose's name appeared in said power or not, but am sure as to the others.

6. Up to May, 1852, I received and paid out moneys for the parties. plaintiff and defendant, on account of this property. After that time, Collins and Cleveland took an office and kept the books and accounts. I do not know what has become of the papers and books so kept by them, but I think they are in the possession of Collins. Towards the latter part of 1853, William D. Primrose came to me and said that Collins and Cleveland would have to give up the office they occupied, and asked me, these gentlemen being both absent, to allow him to put the books and papers in the office of Campbell's Press. I consented, and Mr. Primrose brought the desks, books, and papers, to the press, where they were left for a month or so, and then called for, and carried away by Mr. Collins, I believe.

7. I did receive money from said Collins and from said real estate at various times, from April, 1851, to April, 1855; as to the sources from whence I received said moneys, and the disbursements made of it, I would refer to the documents marked (Exhibit A) and (Exhibit B), which are copies of the accounts current kept by me, and give fully and in detail the history of my receipts and disbursements on account of the property. My authority for receiving and paying out the money was the consent of all the parties, Collins, Cleveland, Campbell, and Thompson. In addition to the amounts named in the above mentioned accounts (marked A and B), I also received on the 2d of April, 1852, from Sidney E. Collins, $250, being the amount loaned him by James Campbell in April, 1851, to defray his expenses in going to Texas and bringing back his family, and also $18 61 amount of his bill at Campbell's Press for hay and corn, also $1500, James Campbell's portion of the surplus after building stores. The exhibits hereto annexed (marked A and B) are true copies of the accounts kept by me, and I desire that they may be taken as a part of my answer to this interrogatory.

8. I do not know of my own personal knowlege of moneys paid by James Campbell on account of said real estate, but on reference to the books of James Campbell, I find that he and William F. Cleveland paid from 1843 to 1851, $2775, on account of said real estate. I cannot state any specific services rendered by him. He together with Cleveland superintended the building of the wharf. Of the said amount of $2775, one-half was paid by James Campbell.

9. For answer to this interrogatory, I would refer to the accounts (marked A and B) hereto annexed, they being copies of the accounts

kept by me. They contain in full a history of the accounts between the parties so far as I know them.

10. Collins and Cleveland did keep an office and do business together; the office was in Mobile, in Moses Waring's block of buildings, being the buildings in which is the office of Boykin and McRae. The business they did together was, I believe, entirely in relation to the Collins property, and the books in relation to said business were, I believe, kept by Mr. Collins.

11. Collins & Cleveland after a certain period (I think February, 1851), acted under a power of attorney for all the parties in interest; they let out contracts for building; superintended and directed the work; made payments; collected rents, &c. Previous to that time James Campbell and Cleveland acted by the consent of the parties in rebuilding the wharf above testified about by me.

12. I have answered all I know in relation to the issue of this suit; the copies of accounts which I have annexed, give a full statement of the accounts between the parties so far as I know them.

Answers to cross-interrogatories.

1. I have no knowledge of any such transaction as the one herein inquired of, nor on examination of James Campbell's books can I find any entry to that effect. My personal knowledge of the accounts of the parties to this suit commenced in 1851. I have never heard any of the defendants say anything about such a transaction.

2. I never knew of such a notice as is herein inquired of, of my own personal knowledge, nor have I ever heard it spoken of.

3. I never heard of such a notice from any one whatever.

4. I do not know, nor have I ever heard that he was so notified by the Branch Bank.

5. I do not know anything of the notice, if there was one, nor who received the rents.

6. I know nothing of the matters herein inquired of.

7. The wharf was commenced in 1851, and completed in 1852, and the stores were commenced in 1852, and completed in 1853.

8. Of my own knowledge I know of no advances made by him prior to 1851, as I have before said. On reference to James Campbell's books I find that between the years 1843 and 1851, he advanced, together with W. F. Cleveland, $2775, James Campbell paying one-half of said sum.

9. I cannot state specifically any personal services rendered by him prior to that date, subsequent to 1851. He superintended, together with Cleveland, the building of the wharf spoken of in my direct examination, and he also superintended the driving of piles for the foundation of the stores.

10. James Campbell did receive from Sidney E. Collins, and the Collins property, the amounts herein mentioned and all of said sums with the exception of $1500 of and under date of April 1st, 1852, and contained in the exhibits hereto attached (marked A and B)

which contain a history of the receipts and disbursements, and which I make a part of my answer to this cross-interrogatory.

11. It did not; and for further answer to this interrogatory, I would refer to Exhibits A and B, hereto attached, showing the balance to the credit of the Collins property at that date.

12. Of my personal knowledge I know of no other sum advanced by James Campbell except the $368 69 herein mentioned. As before said, in reference to James Campbell's books, I find that he and Cleveland advanced in equal proportions $2775, prior to 1851. I cannot give the items of this amount, nor for what purpose it was expended; nor do I know the dates, nor at whose instance or request it was advanced.

13. The first item of money paid out by James Campbell was the one herein inquired of.

14. Not that I know of.

15. Cannot mention any other sum paid or advanced by him before the termination of the suit, except the $2775 paid by him in equal proportion with James Campbell, information of which I got from James Campbell's books.

16. They have, since the time inquired of, received rents, but I not know to what amount or in what proportion.

17. I have no knowledge of this at all.

18. I did nothing of the kind.

19. For answer to this I refer to Exhibits A and B hereto annexed.

20. I do not know, nor have I ever heard, anything of this.

21. I know nothing of this.

22. I was not aware, until so informed by this cross-interrogatory, that such was the case; and, if it be so, I know nothing as to the reasons.

23. I know nothing of the matters herein inquired of.

24. I do not know when James Campbell and Wm. F. Cleveland heard it; nor do I remember the date at which I first heard it; nor do I know when they first employed counsel in the matter.

24. I never heard Mr. Cleveland say anything of the kind.

DOUGLAS CAMPBELL.

Exhibits.

Exhibit A.

THE COLLINS PROPERTY

1851. IN ACCOUNT WITH ———.

				Int. 8 p. ct.
April	3.	To amount paid through Drury Thompson,	$368 89	$26 97
June	1.	To making fence around Collins prop'y,	20 00	1 20
"	1.	To removing mill rocks from property,	6 00	36
Aug.	20.	To amount paid Windham for timber for wharf,	89 74	3 79
"	27.	To amount paid for plank for fencing property,	46 82	1 90

Sept.	3.	To amount paid Windham for timber for wharf,	103 89	4 05
"	15.	To amount paid R. Greig, account rebuilding wharf,	300 00	11 00
"	16.	To amount paid Windham, to account piles for wharf,	50 00	1 83
"	17.	To amount paid S. T. Douglas,	10 00	36
Oct.	11.	To amount paid R. Greig, to account rebuilding wharf,	100 00	3 09
"	16.	To amount paid Windham in full for piles, wharf,	49 75	1 48
"	17.	To amount paid B. Alvarez for forty round piles, wharf,	40 00	1 19
"	18.	To amount paid R. Greig, to account rebuilding wharf,	100 00	2 94
Nov.	6.	To amount paid do., to account rebuilding wharf,	200 00	5 07
"	6.	To amount paid Windham, timber and piles for wharf,	58 86	1 43
"	6.	To amount paid E. Ryan, to account timber for wharf,	75 00	1 90
"	10.	To amount paid R. Greig, to account rebuilding wharf,	160 00	3 91
"	15.	Do. do.	200 00	4 67
"	29.	Do. do.	440 00	8 90
Dec.	10.	To amount paid J. M. Brown, account timber for wharf,	500 00	8 89
"	18.	To amount paid J. M. Brown, in full of timber for wharf,	219 88	3 51
"	30.	To amount paid E. Ryan, on account timber for wharf,	267 00	3 61
1852.				
Jan'y	24.	To amount paid Partridge for tin roof on Gallup's office,	95 00	76
"	27.	To amount paid J. Riley for filling bulkhead wharf (note),	850 00	6 22
Feb'y	1.	To drayage on slates,	32 00	21
"	3.	To amount paid R. Greig, in full for rebuilding wharf,	500 00	3 00
"	3.	To amount paid R. Greig for timber and piles for wharf,	71 29	53
"	5.	To amount paid E. Ryan for timber for wharf, in full,	142 40	79
"	15.	To hauling ballast,	39 45	12
"	18.	To amount paid for copper for new stores,	303 02	1 48
		Interest to March 1st down,	114 91	
			$5,552 90	

1852.					
March 1.	To balance over,	$2,294	60	$40	78
" 8.	To cash paid through W. F. Cleveland,	30	00		49
Feb. 5.	To amount of J. Campbell's note to D. Cannon for slates,	1,646	51	19	40
M'ch 10.	To cash paid through W. F. Cleveland,	100	00	1	57
" 11.	Do. do.	123	50	1	92
" 13.	To cash to J. Riley for hauling ballast,	20	55		32
" 13.	To cash to J. Riley for tiles,	29	34		44
" 13.	To R. Greig for securing raft timber,	1	00		1
" 14.	To do. for piles,	5	00		8
" 18.	To amount O. Mazange's bill for wh'f,	190	91	2	67
" 21.	To cash to negroes for hauling timber from dock,	10	25		53
" 23.	To cash paid through W. F. Cleveland,	146	50	1	89
" 23.	Do. do.	50	00		66
" 24.	Do. do.	500	00	6	33
" 30.	Do. do.	161	50	1	84
" 31.	Do. do.	100	00	1	11
April 3.	Do. do.	75	00		80
" 6.	To amount Skates & Co.'s bill for wh'f,	5	00		5
" 16.	To amount Gliddon's bill for wharf,	61	20		48
	Interest down,	80	95		
	To balance due Collins property, May 21, '52,	766	38		
		$6,398	19		
1852.					
May 27.	To amount paid M. J. McRae,	$454	18		
Oct. 7.	To amount of James Campbell's note to W. F. Cleveland, to balance the account,	1,176	20		
		$1,630	38		
1852.					
M'ch 16.	By cash from W. Jones, Jr.,	$5,000	00	$72	20
" 18.	Do. from S. E. Collins,	368	39	5	17
April 2.	Do. do.	600	00	6	53
" 2.	Do. do. rents,	188	00	2	05
" 6.	Do. from S. E. Toulmin,	30	00		30
" 30.	Do. from Sands & Co.,	125	00		55
	Interest down,	86	80		
		$6,398	19		
1852.					
May 21.	By balance from Dr. side,	$766	38		
	By cash from W. F. Cleveland, rent,	864	00		
		$1,630	38		

CAMPBELL'S PRESS.

1851.					
Aug. 27.	By Fettyplace, Goodman & Co's note, $1,200, $\frac{5}{9}$,	$666 67			
	Discount,	15 56			
			$651 11	$26 48	
Dec. 8.	By cash from Fettyplace, Goodman & Co., $1,000, $\frac{5}{9}$,		555 56	10 11	
" 18.	By 140 feet timber used for C. press wharf, at 7 c.,		9 80	15	
" 24.	By Fettyplace, Goodman & Co.'s note, $1,200, $\frac{5}{9}$,	$666 67			
	Discount,	7 70			
			658 96	9 66	
1852.					
Jan'y 7.	By Fettyplace, Goodman & Co.'s note, $1,200, $\frac{5}{9}$,	$666 67			
	Discount,	7 00			
			659 67	7 77	
Feb. 18.	By Fettyplace, Goodman & Co.'s note, $1,200, $\frac{5}{9}$,	$674 33			
	Discount,	7 08			
			667 25	1 78	
	(The above notes are for wharf rent.)				
	Interest down to March 1, '52,		55 95		
	By balance due Campbell's press, M'ch 1st, '52,		2,294 60		
			$5,552 90		

Exhibit B.

COLLINS PROPERTY

IN ACCOUNT WITH JAMES CAMPBELL.

DR.

To amount due McRae, assumed by James Campbell, Feb'y 20, '52,		$5,000 00	
Less J. C. note for McRae (part of above) included in former settlement,	$454 18		
Less J. C. note for W. Hutchison, part of above, paid by Collins property,	2,272 92		
		2,727 10	
		$2,272 90	
To interest on this amount from February 20, '52, to June 1, '55, at 8 per cent., 3 37,		592 96	
		$2,865 86	

To 180 tons ballast on Feb'y 15, '54, placed around stores, at $1,	$180 00		
Interest to June 1, 1854,	18 64		
		$198 64	
To hauling the above, 40 c. per ton, Feb. 23, '54, 1.3.8,	$72 00		
Interest,	7 21		
		79 21	
To 80 tons ballast, at $1 per ton, May 28, '54, 1.0.8.8; interest $6 41,		86 41	
To hauling the above 80 tons ballast, at 40, May 9, '55, 32,		32 00	
			396 26
			$3,262 12

Cr.

By difference between am't of note paid and am't charged by J. C. previous to former settlement, say on Feb'y 5, '52,			
Amount charged,	$1,646 56		
Amount paid,	1,135 28		
	$511 23		
Interest,	135 81		
		$647 04	
By cash from Battle & Co. for flagging, Aug. 5, '52, 2.9.26,	$300 00		
Interest,	67 73		
		367 73	
By cash from Emanuel for do., Sept. 11, '52, 2.8.17,	$128 00		
Interest,	27 80		
		155 80	
By cash paid W. A. Smith, by W. F. C., 1 Nov., '54, 0.7.0	$453 21		
Interest,	21 15		
		474 36	
April 24, '55. By F. G. & Co.'s note from W. F. C., on account, at 90 d. (less interest),	$1,000 00		
Interest,	14 50		
		985 50	
			2,630 43
Balance due James Campbell, June 1st, 1855,			$631 69

The foregoing deposition of Douglas Campbell was taken, subscribed, and sworn to at the city of Mobile, on the 15th day of January, 1857, before Richard B. Owen, Esq., a commissioner appointed to take testimony in the said cause.

Filed 7th April, 1857. GEO. S. HOLT, *Clerk.*

No. 38. *Interrogatories to be administered to John H. Hastie, a Witness on behalf of the Complainant in said Cause.*

(The deposition of this witness was taken by the complainant, who declined reading it on the trial, and it was read in evidence by the defendants.)

Direct Interrogatories.

1. Were you a party defendant to a bill in equity brought in this Court in 1844, in the name of Sidney E. Collins, as complainant, against the heirs and representatives of Joshua Kennedy, deceased, and do you know the estate embraced in that suit, and how the controversy was terminated? If yea, please state what entered into the settlement of that suit after the final decree, and state what was conveyed and transferred on the part of said defendants.

2. If you have answered that a bond or covenant, made by William F. Cleveland to Joshua Kennedy, entered into that settlement, you will please describe said bond or covenant by its date, penalty, condition, or effect, or attach, if you have it, a copy of such bond or covenant, and state what was due upon it at the time of said settlement.

8. Do you know the condition of the real estate recovered in said suit in 1850, 51? If yea, what were the rents and profits for that year, and what were the taxes upon it? State the amounts respectively, and what part of the rents and profits were divided from wharf rents, and what was the condition of the wharf.

4. Do you know anything of a notice said to have been given by Sidney E. Collins to James Campbell about back rents for a portion of the property north of St. Louis Street? If yea, state what knowledge or information you have, from whom derived, and when. If you have a copy of said notice, please attach it to your answer hereto, and state from whom you received it.

5. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or which may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

K. B. SEWALL,
Sol'r and of Counsel for Complainant.

Filed October 21, 1856. GEO. E. HOLT, *Clerk.*

Cross-Interrogatories on the behalf of the Defendants to the Witness.

1. Were you present when the settlement was made, and do you speak of your own knowledge, or from information derived from *us?*

If you know of the settlement, state with whom it was made, who were present, when and where it was made, and its terms.

2. If you state that a covenant or bond of William F. Cleveland to Joshua Kennedy entered into that settlement, state particularly the date of that bond, where it had been, and in whose possession. How much had been paid upon it, what was the peculiar condition of Cleveland, or supposed to be at that time? Was the bond considered of much or any value? If so, state how much. Had it not been in some way cancelled, satisfied, and discharged?

3. If you speak of the rents of the property, state if you speak of your own knowledge, and from whom, and from what source did you derive your information?

4. If you know anything of the notice referred to in the 4th direct interrogatory, state from whom you derived your information, and please annex the notice that was served on you. If you decline to do this, state in whose handwriting the notice is. Have you ever seen the notice, in whose possession was it, when, and from whom did you receive it? For what purpose was it given to you, or received by you? Where is the notice you saw, or the notice you received?

Notice of the time and place of examining witness is required.

CHANDLER, SMITH & HERNDON,
Def'ts' Solicitors.

Filed 1st November, 1856. GEO. E. HOLT, *Clerk.*

No. 38. *Deposition of John H. Hastie.*

The said witness, in answer to the several direct and cross-interrogatories propounded to him, deposes, and says, on oath, as follows:—

1. I was a party defendant. Knows the estate embraced in the suit, and the complainant obtained a decree. In the settlement a lot of land lying between State Street on the north, and St. Anthony Street on the South, and Royal Street on the west, and William F. Cleveland was discharged from a debt due to Joshua Kennedy's estate, evidenced by a bond made payable to Joshua Kennedy, entered into the settlement or compromise made between complainant and defendants.

2. I have seen the bond in the possession of the heirs of Kennedy. I cannot, from recollection, describe its date, penalty, condition, or effect. My best impression is, the penalty was thirty or thirty-five thousand dollars. I have no copy of it, nor can I say what was due upon it, at the time of settlement.

3. The property was unimproved in 1850, 51. The rents and profits were absorbed in taxes and expenses. I cannot give the rents and profits for those years, and refer to the tax-books for the taxes upon them. These matters were attended to by the executor; and I know nothing in regard to wharf rent. The wharf was kept in order by the lessee.

4. I know nothing inquired of in this interrogatory.

5. I know nothing further.

Answers to Cross-interrogatories.

1. I was not present at the settlement. My knowledge was derived from my having to act as a party to the settlement, after its basis was arranged.

2. I do not recollect the date. I saw it among Mr. Kennedy's papers, and was in the possession of the heirs of Kennedy, or the executor. I do not know how much had been paid upon it. I do not know that anything had been paid on it. I considered Cleveland worth nothing at that time, nor the bond of much value. I do not know that it was satisfied, cancelled, or discharged.

3. I know nothing of the matters inquired of.

4. I know nothing. J. H. HASTIE.

The foregoing deposition of John H. Hastie was taken, subscribed, and sworn to, at the city of Mobile, on the 16th day of January, 1857, before Frederick S. Blount, Esq., a commissioner appointed to take testimony in the said cause.

Filed 13th March, 1857. GEO. E. HOLT, *Clerk.*

No. 39. *Letter from Sergeant to Campbell.*

Washington, Feb. 4, 1850.

My Dear Sir: Since my last letter to you, I have been waiting for a cause expected to come on some time ago; it will come on to-day, and I shall return to Philadelphia before the end of the week, where I hope soon to hear from you. The arrangement of the business of the term has not yet been announced. There will certainly be a recess, and then a further sitting of the Court to go on with the doquet. The time is not yet fixed. When it is I will let you know. How far the Court will be able to go with the doquet, of course cannot yet be said, but the active share it may put upon me for my share of the business, has required and received my serious attention, with reference, not to my inclination, but to my strength. The result I will now state to you, so far as you are at all concerned in it, and beg your support and aid. The cases from Alabama, on the doquet, to which you have solicited my attention, are the following:—

No. 98. Farmer's Heirs *vs.* Mobile.
" 99. Barbarie *vs.* Eslava.
" 100. Pollard's Heirs *vs.* Kibbe.
" 114. Kennedy *vs.* Collins.

The first of these cases I expect to argue, probably after the recess, though it may come on sooner. The last (Collins's) I hope to be able to take part in with you, and certainly will if I can. The other two (99 and 100) I must withdraw from, and I request you so to inform the parties, that they may employ other counsel. I have never heard from either of them, and hardly know whether I am their counsel or not. I have so far watched the cases. The notice I am now giving them will be no expense to them. They have given

me nothing. I do not give up the cases on this account, but avail myself of it as leaving me at liberty, and hope you will so consider it. Please let me hear from you, addressed to Philadelphia.

Y'rs very truly, JOHN SERGEANT.

Addressed, J. A. Campbell, Esq.

NOTE.—Here on the trial the defendants closed their testimony.

Complainant's Objections to the Defendants' Testimony.

SIDNEY E. COLLINS, vs. DRURY THOMPSON, *et al.* } In Equity.

The defendant, Cleveland, produced at the hearing his bond to Kennedy, mentioned in the bill, with the endorsements thereon, dated tenth October, eighteen hundred and thirty-three. The genuineness of the paper and of the endorsements are admitted, the complainant objecting, however, to the competency of the endorsements as evidence, and because they have not before seen said covenant and endorsements, and have had no opportunity to examine witnesses upon the same. K. B. SEWALL.

Filed 23d May, 1857. GEO. E. HOLT, *Clerk.*

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

In Equity. Circuit Court of the United States, 5th Judicial Circuit, Southern District of Alabama.

Complainant's Objections to Defendants' Testimony.

Before the hearing of the cause, complainant moved the court for time to examine the depositions of the defendants, in order to make and present such preliminary objections to the same as might be proper, but such application was overruled, with liberty, however, for the complainant during the hearing to make and present such objections, and any other, and to have the same benefit thereof as if made prior to the hearing. And now, at the hearing, the complainant files the following objections to the defendants' evidence, to wit: Complainant objects to the depositions of Douglas Campbell, William Kitchen, and William J. Kennedy, on the ground that the last general direct interrogatory to each of them does not conform to the rule of practice, 71 rule; and also to the last-named witness on the further ground that the notice served on the complainant was that interrogatories had been filed to J. W. Kennedy, and not to Wm. J. Kennedy; and he attaches such notice hereto. He objects to the deposition of John A. Campbell on the ground that it was irregularly executed, and that the witness was not examined upon the cross-interrogatories separately *seriatem*, and has not answered each and every of said cross-interrogatories. He objects also to the deposition of Daniel Chandler on the ground that the said witness is incompe-

tent by reason of interest in the subject matter of the suit, and on these grounds respectively moves to suppress and exclude each of said depositions. Complainant objects to so much of the answer of John A. Campbell to the third, fourth, and fifth direct interrogatories as refers to and states the import of a letter said to have been addressed to him in the handwriting of Wm. D. Primrose, and signed "*A Crazy Person*," as well as to all statements of the contents of that letter, or any other letter addressed to him by said Primrose, as incompetent testimony against the complainant. He objects also to all statements in said deposition of conversations between the witness and Chandler and Smith, or either of them, or any other person than the complainant. Also to all that is stated by said witness in answer to the 54, 55, and 56 cross-interrogatories, or either of them, about Primrose's being the adviser of Collins, as uncalled-for and incompetent.

He also objects to the following letters, written by Wm. D. Primrose to William F. Cleveland, as uncalled-for and incompetent, to wit: one dated 29th Aug't, 1851; one dated 14 Sept., 1851; also to a letter written by said Primrose to J. A. Campbell, dated 19th May, 1851, all said letters being exhibits to deposition of J. A. Campbell, said letters being illegal evidence and irrelevant.

He also objects to the answer of James H. Campbell to the last direct interrogatory, and to the letters attached to it, on the ground that said letters were uncalled-for by any interrogatories to said witness, were produced without notice to the complainant, and without his having an opportunity to cross-interrogate in regard to them, and because the same are irrelevant.

Complainant objects to so much of the deposition of Daniel Chandler in answer to the interrogatories to him as alludes to or states a conversation held between Chandler and Primrose, the same being incompetent testimony in this case, and particularly to the 7th and 8th direct and to the 34th cross. He objects to all the answers of Robert H. Smith that refer to conversations and impressions derived either from Collins or from Primrose, the witness not being able to designate from which, as incompetent, and also irrelevant. He objects to the depositions of Henry Lewis, and to all other parol evidence as to the establishment of alley-ways, or the intention of Joshua Kennedy as to alley-ways, as incompetent, being parol, contradictory to his deed, and irrelevant in this suit. He objects to the deposition of John Y. Thompson, and all this witness says about getting an order from Primrose to print the opinion of the Supreme Court, the same being in no manner connected with the complainant, or known or authorized by him, as incompetent and irrelevant. He objects to the depositions of Barton, Alford, W. J. Kennedy, Vickers, Delphine Lewis, Edward A. Lewis, Williamson, Coyle, and Sandford, relating to complainant's citizenship, as irrelevant, and to a matter not in issue in this suit. He objects to the depositions of Geddes, Read, and Tchudy, because taken without notice, and without oppor-

tunity for complainant to cross-examine. He also objects to the answers to all the interrogatories filed by the defendants to witnesses, and to all parts of such which were objected to as leading, and on other grounds, by the complainant, and which objections were filed, and for the grounds therein set forth, and moves that the same be excluded or suppressed. JOHN. T. TAYLOR.

K. B. SEWALL, *of Counsel for Complainant.*

Copy of Notice attached.

To Mr. Sidney E. Collins, or K. B. Sewall, Esq., his Solicitor:—

You will please take notice that the original interrogatories to Douglas Campbell and J. W. Kennedy have this day been filed in my office, and that 10 days after service of this notice, a commission will issue thereon at the instance of the defendants in the said cause.

MOBILE, 16 Dec'r, 1856. GEO. E. HOLT, *Cl'k.*

Objections filed 28 April, 1857. GEO. E. HOLT, *Cl'k.*

Testimony introduced by the Complainant in rebuttal.

No. 1. *Interrogatories to be propounded to Charles S. Kelly and Paul H. Breedin, of Texas, witnesses on the part of the Complainant in the said cause.*

1. Where do you reside, and what is your business or occupation?

2. Do you know the above named parties to this suit, or any and which of them?

3. Do you know whether or not the said Sidney E. Collins voted at the last presidential election of your State, and where, and how you know it? State all you know on this subject.

4. Did you or not act as inspector or clerk at the said election in the town of Victoria, Texas, on the fourth of November, 1856? Was a list of the voters kept by you, and have you now access to it? If so, state whether the name of Sidney E. Collins, or S. E. Collins, was at that time put upon said list, and by whom.

5. Are you well acquainted in Western Texas? If yea, do you know of more than one person of the name of Sidney E. Collins residing there? If you do, describe all you know of that name, and which, if any one of them, voted at said election.

K. B. SEWALL, *of Counsel for Compl't.*

Filed 3d March, 1857. GEO. E. HOLT, *Clerk.*

Cross-interrogatories to the said witnesses by the Defendants in said cause.

1. How long have you known Sidney E. Collins? How long has he lived in or near Victoria? When did he remove with his family to Mobile, and when did he return?

2. When he left Liberty or Texas for Mobile did he sell on this property? Did he take his negroes with him? State fully.

3. When he returned to Texas in 1855 or '56, did he bring his negroes back with him, or did he leave them? Where did he reside

on his return? Did he board or keep house? Did he rent or purchase a house? State fully.

4. Did not Mr. Collins, with his family, return to Mobile in December, 1856? When did they return to Texas in 1857?

5. Please state where Mr. Collins' family were in January, February, March, April, May, and June, 1856. Were they in Texas?

6. When did they arrive in Victoria in 1856, or in the county in which Victoria is situated? How long, by the Constitution of your State, must a person reside in your State, or in the county, before he is entitled to vote?

7. Was Mr. Collins' vote challenged? Was he sworn as to his right to vote? If you know that he voted, for whom did he vote, and was he or not warmly in favor of his election (the candidate for whom he voted)? State fully.

8. If you know nothing of the plaintiff, but only speak of the fact that the name of Sidney E. Collins, or Collins, appears on the list of voters, please state if you know that the plaintiff was the Collins who voted on that occasion. Do you recollect the person who voted, was it the plaintiff? How is his name registered; is it put down S. E. Collins, Sidney E. Collins, or Collins? Do you pretend to state that in Western Texas there is no other man by the name of Collins or S. E. Collins?

9. Has any one spoken to you on the subject of your answers or your testimony? If so, state the person and when it was.

10. State all you know that will benefit the defendants.

CHANDLER, SMITH, & HERNDON,
Defendants' Solicitors.

Filed 13th March, 1857. GEO. E. HOLT, *Clerk.*

No. 1. *Deposition of Charles S. Kelly.*

The said witness to the several direct and cross-interrogatories deposeth and saith on oath as follows:—

1. In the town and county of Victoria. Hotel keeping and licensed auctioneer.

2. I know Sidney E. Collins. I know nothing of any of the others.

3. I do know that he did vote at the election in the town of Victoria, and he told me that he would not lose his vote. He laid over one trip of the stage for the purpose of attending the election.

4. No, I did not act as clerk or inspector. A list of votes was kept by the clerks of the election. I have, as any other man who wishes to, examined the list of voters. His name was entered on the list, but I do not recollect whether his name was entered as S. E. Collins or Sidney E. Collins by the clerks of the election.

5. I am. I do not know of any other man by the name of Collins.

(Signed), CHARLES S. KELLY.

Answers of the said witness to the Cross-interrogatories.

1. I have known him for two years. I don't know of his living at Victoria. He lived at San Antonio. I don't know when he went to Mobile, or when he returned.

2. I do not know anything about the question asked. I never saw any negroes with him, don't know that he ever had any.

3. I know nothing about it. San Antonio was his home. I don't know. I don't know whether he rented or purchased.

4. I do not know. Don't know.

5. I do not know. Don't know where they were.

6. Don't recollect. Twelve months in the State and six months in the county entitles them to vote for State and County officers.

7. He was asked if he was a citizen of the State, and that he was only voting for State officers. He was not sworn; the judges received his vote. He voted what was called the American ticket. Yes; he was like any other man who took any interest in having his party elected.

8. I have had business with S. E. Collins for two years during his stay at San Antonio, by forwarding baggage, &c., from my hotel, being the agent of the Stage Company. Yes, I know him to be the same man. The plaintiff is the man who voted. When called on by the said S. E. Collins, I went with him to see the chief justice of this county to see the list of the voters' names, and, upon examining it, it showed the name of S. E. Collins. I have been in Western Texas over seven years, and kept a public house; never heard of any man by the name of Collins but the one referred to, Sidney E. Collins.

9. No person ever spoke to me on the subject. Know nothing about it. When I returned home I was informed that the Notary Public wanted me at his office.

10. To tenth cross-interrogatory, I have told all I know.

CHARLES S. KELLY.

No. 1. *The Deposition of Paul H. Breeden.*

The said witness answers, and says on oath as follows: —

1. To the 1st interrogatory. In the town and county of Victoria, State of Texas, and acting as deputy sheriff of said county of Victoria.

2. To second interrogatory. I know Sidney E. Collins. I have no acquaintance with any of the said defendants.

3. To third interrogatory. I know that S. E. Collins did vote at the Presidential election. He voted at the polls held at the Courthouse in the town of Victoria, Victoria County, and State of Texas, on the fourth day of November, 1856.

4. To fourth interrogatory. I acted as one of the clerks of the election. There was a list of voters' names taken by each of the clerks.

I have. The name of S. E. Collins was entered by me as he was a voter, and the poll list shows his name upon it.

5. To fifth interrogatory. I am well acquainted in Victoria County, and some of adjoining counties. Western Texas embraces a large extent of country, some portions of which I am not acquainted with. I do not know of any other person by the name of Sidney E. Collins, or S. E. Collins, in this section of the State. If there was, I would know it from the opportunities I have. Never heard of any other by the name of Collins, but the one I have mentioned as having voted at the election, as I have stated.

P. H. BREEDEN.

Answers of said Witness to the Cross-interrogatories.

1. My first acquaintance or knowledge of him was upon the day of the Presidential election, 4th November, 1856. Afterwards I had a personal introduction to him. I dont know that he ever did live in or near to Victoria. I do not know when he removed with his family, or when he returned to Mobile.

2d Cross-interrogatory. I do not know. I know nothing about his family, or his negroes.

3d Cross-interrogatory. I do not know. I do not know; don't know. I know nothing of it, as all the knowledge I had of him was formed at the time of the election.

4th Cross-interrogatory. I know nothing of his movements. Don't know.

5th Cross-interrogatory. I do not know.

6th Cross-interrogatory. I do not know when he arrived in Texas, or in what portion or town on the coast of Texas he first landed. Under our State Constitution the residence is one year in the State, and six months in the county which entitles them to vote for any office.

7th Cross-interrogatory. No; the judges of the election being satisfied of his qualification to vote. No. Yes; I know he voted; don't know who he voted for; he did not appear to manifest any particular interest.

8th Cross-interrogatory. I do not know that the S. E. Collins, who voted on the day of election, as I have before stated, is the same Sidney E. Collins the plaintiff in this suit. I recollect the man by the name of S. E. Collins who voted, but don't know that he is the man whose name stands as plaintiff in this suit; his name was registered as S. E. Collins. I do not know of any other man by the name of S. E. Collins, or Collins.

9th Cross-interrogatory. No; I have not been spoken to by any one. The only knowledge I had, was when called upon by the Notary Public to appear and answer interrogatories.

10th Cross-interrogatory. I have stated all I know.

P. H. BREEDEN.

The foregoing depositions of Charles S. Kelly and Paul H.

Breeden, were taken, subscribed, and sworn to at Victoria, Texas, on the 4th day of April, 1857, before James Ingram, Esq., a Notary Public, and a commissioner appointed to take testimony in the said cause, and filed 10 Dec'r, 1856.

GEO. E. HOLT, *Clerk.*

No. 2. *D. Chandler's rec't for Fee Note.*

Received, Mobile, May 8th, 1855, of Sidney E. Collins, a note drawn by Jacob Magee, to the order of Sidney E. Collins. Said note is for eight hundred dollars, and due on the 2d day of July, 1855. This note, or the proceeds of the same, is to be applied on a note of the said Collins, held by John A. Campbell, of like amount, and due at the same time,

(Signed) DAN'L CHANDLER.

(Indorsement.)

SIDNEY E. COLLINS
vs.
D. THOMPSON *et al.*

In Equity. Cir. Court of the United States, Southern District of Alabama.

On the hearing of this cause it was admitted that the within receipt, written by Sidney E. Collins, was signed by Daniel Chandler, and given to the complainant on the day it bears date.

(Signed) DAN'L CHANDLER,
K. B. SEWALL.

(Read in evidence.)

Filed 28th April, 1857. GEO. E. HOLT, *Clerk.*

No. 3. *Extracts from Printed Record.*

Here the complainant introduced the following specified extracts from the printed record in the case of Sidney E. Collins *vs.* Joshua Kennedy's Executors and Heirs, etc. (See Agreement, page 000, to wit:—

"*Deposition of Henry V. Chamberlain. Page* 213.

To the sixth interrogatory he answers: He has known the land described in this interrogatory since 1820; this land, in 1820, was subject to overflow in high tides to within 60 feet of Royal Street, the balance of it was flat and marshy; its value, in 1820, was from $1500 to $2000. In 1820, Water Street had been extended over the land, and its value was then not exceeding $6000.

To the seventh cross-interrogatory he answers: This land began to be considered valuable from 1833 to 1835. It rose largely in value then, perhaps threefold; this was owing to a spirit of speculation at that time beginning to operate; this land was brought into notice by the extension of the buildings of the city northwards; the improvements on the land consisted of several large brick buildings, and the filling up the property, and the erection of one or more

wharves by Joshua Kennedy, Wm. F. Cleveland, and James Campbell, and others."

"*Deposition of Sidney Smith, John Bloodgood, and Wm. Jones, Jr.*

Int. 2. What was the value of that land in 1820 and '30? What was the value in 1844? Page 169.

Cross-int. 3. Have you any interest in this suit, or expectation of benefit, or advantage by a recovery of the plaintiff therein? Who else, besides Sidney E. Collins, is interested in the prosecution of said suit, or has made any advances, or expended any money for the carrying of it on, to the best of your knowledge, information, or belief, and by whom were you so informed? Page 170.

Cross-interrogatory 15th. Will you state whether, as a general rule, lands and lots in the city of Mobile, have not for the last 15 years been assessed, for purposes of city taxation, a good deal above what ought, or would be considered their cash value, and how much on an average. Has not unimproved or waste property been generally assessed higher, in proportion to its value than improved and productive property? Have not the city assessments been generally made on the basis of a speculative or credit value, than what the property would actually be sold for in cash? (Page 171.)

To the second interrogatory, *Sidney Smith* says: He cannot tell the value of said land in 1829 and 1830. He thinks it would have been worth at least one hundred thousand dollars, as vacant property, in 1844. (Page 285.)

To the 3d cross-interrogatory he says: He has no interest in this suit, and has no knowledge of the controversy from which he can state who are the parties interested in carrying it on. (Page 286.)

To the 15th cross-interrogatory he says: He cannot well say, but thinks, that these lands have generally been assessed higher than their real value by the assessors of taxes, say since 1840. He thinks they have been assessed higher than they would sell for cash. Does not believe that the assessors assessed higher on a plan or rule than what the property was worth, although their estimate has frequently been higher than that at which witness would have valued them. (Page 289.)

To the second cross-interrogatory, *J. Bloodgood*, says: He should think it was worth, or would have sold for twenty-five or thirty thousand dollars, equal to cash, in 1829 or 1830. Thinks it was worth about $100,000 in cash in 1844, without the buildings or improvements upon it. (Page 289.)

To the third cross-interrogatory he says: He has no interest in the event of this suit, and does not know who is interested (if any one) besides Sidney E. Collins in prosecuting this suit. (Page 289.)

To the 15th cross-interrogatory he says: For several years past, he thinks property has been assessed higher for purposes of taxation, than it could have been sold for cash. (Page 289.)

To the second interrogatory *Wm. Jones, Jr.*, says: He thinks the

value of that land in 1829 and 1830, in cash, was about from eight to ten thousand dollars. In 1844, witness thinks said land was worth in cash somewhere about one hundred and fifty thousand dollars, without any improvements upon it. (Page 302.)

To the 15th cross-interrogatory he says: He thinks the property in Mobile has been assessed higher by tax assessors for the last fifteen years than its cash value; for the last four or five years it has been assessed a good deal above its cash value, as he thinks. He has known some instances where it was assessed at double, and some even three times its cash value. Witness cannot answer the last of this interrogatory any more fully than he has already done. (Page 303.)

Cross-Interrogatories to John K. Collins, Henderson Kinney, Elisha Huntington, Daniel Walker, Jacob B. Walker, John Ticknor, George Huggins, Joseph B. Earle, John S. Gliddon, Daniel Robertson, and Joseph Cain.

Cross-int. 1. Have you any interest in this cause on the side of the plaintiff, or do you expect any advantage from his success therein? State what other persons have such interest or expectations, or have made advances, or have expended money to aid in carrying it on, to the best of your knowledge, information, or belief, and by whom you have been so informed, and what are the grounds of your belief. (Page 186.)

To the first cross-interrogatory, *George Huggins* answers and says: He is not himself interested in the prosecution of this suit, and does not know who is, only he supposes the plaintiff to be (page 293.)

To first cross-interrogatory, *John Ticknor* says: He does not know anything about it (page 296.)

To first cross-interrogatory, Cyrus Sibley says: He knows nothing about it (p. 298.)

To first cross-interrogatory, *Daniel Robertson* says: He has no interest in the event of this suit, and does not know who is, except he supposes the parties on the record are (page 308.)

To the first and second cross-interrogatory, *J. S. Gliddon* says: He does not know anything about it (page 312.)

To the first cross-interrogatory, *Joseph Cain* says: He is not interested himself, and does not know who is (page 314.)

To the first cross-interrogatory, *John K. Collins* says: He is not interested in the prosecution of this suit, and does not know who is, unless it be the plaintiff (page 317.)

To the first cross-interrogatory, *J. B. Earle* says: He has no interest in the matter, and does not who has (page 320.)

To the first cross-interrogatory, *Daniel Walker* says: He is not interested himself, and cannot say who are (page 322.)

To the first cross-interrogatory, *Henderson Kinney* says: He does not know who are interested (page 325.)

To first and second cross-interrogatories, *Jacob B. Walker* says: He has no interest in this suit; never had any conversation with Joshua Kennedy about those lands (page 328.)"

Note.—Here both parties concluded their testimony in the said cause on the trial thereof.

And afterwards, to wit, on the twentieth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, the same being a day of the April term, 1857, of the said court, the following order was made in said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Chancery.

This day came the parties, by their solicitors, and by consent it is ordered that this cause be set down for hearing on Thursday next, the 23d instant.

And afterwards, to wit, on the twenty-third day of April, A. D. 1857, the same being a day of April term, 1857, of said court, the following order was made in said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Chancery.

This being the day appointed for the hearing of the said cause, came the parties aforesaid, by their respective solicitors.

Application of Complainant's Counsel for further time.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON *et al.*

Chancery. U. S. Circuit Court, Mobile.

This day being the day set for hearing said cause, the solicitors for the complainant appear and pray the court for further time to examine the evidence, and better prepare the cause for hearing. They respectfully show to the court that the record of the cause is voluminous, that there are some eighty depositions taken in the cause, besides exhibits and other record evidence of very great length. That owing to the fact of the great length of these writings, and from the further fact that two other courts have been in session ever since this hon. court opened, which has claimed much of the time of your petitioners, they have been unable to finish the first reading of the evidence, and would therefore be unable to make the proper objections to its competency, irregularity, relevancy, legality or effect,

and thus fairly present the case. They therefore pray for further time.

JNO. T. TAYLOR,
K. B. SEWALL.

Filed and ordered to be made a part of the record, April 23d, 1857. GEO. E. HOLT, *Clerk.*

And thereupon the said cause came on to be heard upon the reading of the bill of complaint and its exhibits, and the answers of the several defendants, and the exhibits thereto, etc., which was not concluded at the hour of adjournment.

And afterwards, to wit, on the twenty-fourth day of April, A. D. 1857, the same being a day of the April term, 1857, of said court, the following order was made in said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Chancery.

This day came the parties, by their respective solicitors, and the hearing of the said cause was continued by the reading of the answers of the defendants with their exhibits, and the testimony, etc., taken by the complainant in the said cause, which was not concluded at the hour of adjournment.

And afterwards, to wit, on the twenty-fifth day of April, A. D. 1857, the same being a day of the April term, 1857, of said court, the following order was made in said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Chancery.

This day came the respective parties, by their solicitors, and the hearing of the said cause was continued by the reading of the testimony taken by the parties, complainant and defendants in the said cause, which was not concluded at the hour of adjournment.

And afterwards, to wit, on the twenty-seventh day of April, A. D. 1857, the same being a day of the April term, 1857, of said court, the following order was made in said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Chancery.

This day came the parties, by their respective solicitors, and the hearing of the said cause was continued by the reading of the testi-

mony taken by the defendants, and also of the testimony introduced by the complainant in rebuttal, and the testimony taken by both parties was concluded at the hour of adjournment.

And afterwards, to wit, on the twenty-eighth day of April, A. D. 1857, the same being a day of the April term of said court, the following order was made in said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

In Chancery.

This day came the parties by their respective solicitors and the argument of counsel in the said cause was commenced, but was not concluded at the hour of adjournment.

And afterwards, to wit, on the twenty-ninth day of April, A. D. 1857, the same being a day of the April term, 1857, of said Court, the following order was entered in said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

In Chancery.

This day came the parties by their respective solicitors, and the argument of counsel in the said cause was resumed, but not concluded at the hour of adjournment.

And afterwards, to wit, on the thirtieth day of April, A. D. 1857, being a day of the April term, 1857, of said Court, the following order was made in said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

In Chancery.

This day came the parties by their solicitors, and the argument of counsel in the said cause was continued, but not concluded at the hour of adjournment:—

And afterwards, to wit, on the second day of May, A. D. 1857, the same being a day of the April term, 1857, of said Court, the following order was made in said cause, to wit:—

Order.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Chancery.

This day came the parties by their respective solicitors, and the argument of counsel in the said cause being resumed, was on this day concluded. Whereupon the cause is taken by the Court under advisement.

And afterwards, to wit, on the sixth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the same being a day of the term of said Circuit Court of the United States in and for the said District, begun and held at Mobile on the second Monday of April, A. D. 1857, and being the day and year first herein written,

Hon. JOHN GAYLE, *presiding*,

The following final decree was entered in the said cause, to wit:—

Decree Final.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.
In Chancery.

This day came the parties aforesaid by their respective solicitors, and the said cause having come on to be heard upon the bill of complaint, answers, exhibits, depositions and arguments of counsel, and the court having fully considered the same: Whereupon, in pursuance of the opinion delivered by the Court, and which is ordered to be filed, it is ordered, adjudged and decreed by the Court that the bill of the said complainant be dismissed, and that he pay the costs of this suit. (Signed) JOHN GAYLE, *Judge*.

Opinion.

Part 1st, the Bill.

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WILLIAM F. CLEVELAND, JAMES CAMPBELL.

This is a suit in Chancery brought to set aside certain deeds and conveyances mentioned and described in the bill. The case shows that on the 20 November, 1842, Drury Thompson, William F. Cleveland, and William D. Primrose, entered into an agreement to purchase the interest of Joseph Collins, deceased, of all the lands which the said Collins was entitled to at his death, and particularly the lot or tract which is the subject of this controversy. This agreement was afterwards changed so as to let in James Campbell as a partner on equal terms in the speculation. At this period the plaintiff was the only surviving heir and representative of the said Joseph Collins.

The bill states that on the 27th April, 1844, a suit was instituted in this Court in Equity in the name of complainant against the executors of Joshua Kennedy, dec'd, and others, and that the attorneys employed for its prosecution, were John A. Campbell and Daniel Chandler. That at the April term, 1847, a decree was rendered in favor of complainant for the south half of a tract of land situated in Mobile, known as the Alexander Baudain or Collins tract, and for rents, &c., and that this decree was affirmed in the Supreme Court of the United States on the 27th December, 1850, on appeal to that Court. That before a final decree could be entered establishing the true boundary of the land recovered, there was much difficulty between the parties interested and Wm. R. Hallett, the executor of Kennedy, and that after much delay and fruitless effort on the part of Mr. Campbell, *the complainant finally accomplished an amicable arrangement with Mr. Hallett.*

That after this arrangement with Hallett, complainant compromised with some of the tenants for their improvements, and was let into possession of the property. That in the settlement with Hallett, a bond or covenant by Cleveland to Joshua Kennedy to account for the proceeds of certain lands sold by him under an agreement with Kennedy, upon which Cleveland was represented to be liable for a large amount was to be delivered up to complainant. The bill further represents, that before the commencement of the suit, and during its progress, the plaintiff was induced to execute certain deeds and instruments of writing intended to divest him of his rights and a large portion of said estate for the benefit of defendants, which he has since discovered were obtained by fraud, and were in other respects illegal and void. That about the 10 January, 1844, complainant was residing near the town of Liberty in Texas, and there met in said town one of the defendants, Drury Thompson and William D. Primrose. That complainant had known Thompson in Mobile many years before when they were boys, but Primrose was a stranger to him. They represented that they had been on business together in other parts of Texas, and were on their return to Mobile, but hearing that the complainant resided in the vicinity, and being tired, they had concluded to stop a day or two to rest, and to see him. Thompson expressed great pleasure at thus unexpectedly meeting with complainant, and referred to many reminiscences of their former acquaintance in Mobile. Complainant invited them to go home with him. Thompson accepted the invitation, and stayed several nights at complainant's house, going each day however to the village. That while at complainant's house, Thompson, among other things, and in a casual way, referred to complainant's lands in Mobile and vicinity, and asked what had become of them? and when informed that they had been conveyed to Joshua Kennedy, he remarked, that Kennedy had become very rich in lands, and many persons in Mobile accused him of cheating in land matters. He then inquired what Kennedy had given for them, and said Kennedy was endeavoring to extend

the Dubroca claim over his, Thompson's residence, and asked if complainant would not give him a quit claim deed to it. He said he had long been in possession of his residence and spent a good deal of money on it, and that with such a deed from complainant he would be able to keep Kennedy from taking his residence from him.

That, whatever advantage the deed might be to him, he would willingly pay it over to complainant; and that he did not know any other way to head old Kennedy off. To this complainant replied that, though he always had been under the impression that Kennedy had, in some way, he knew not how, overreached him in regard to his lands, yet having given him a deed, he disliked giving two deeds for the same land, and might make himself liable for so doing. Thompson assured him he might give as many quit-claim deeds as he pleased, and not make himself liable; that there was no danger unless he made warranty deeds; that giving him a quit claim could in no way affect the complainant, while it might possibly benefit him, Thompson, in his contest with Kennedy. Upon these representations, complainant finally consented to give him the quit claim deed he desired. It was agreed that Primrose should draw up the deed.

That Thompson and complainant went deer hunting, and while in the woods, Thompson suggested to complainant that he had better give him a deed for all the lands he ever had in Alabama or elsewhere, as the heir of his father, Joseph Collins; that he, Thompson, was clerk of the County Court, and keeper of the records, and if it was possible to recover anything, he, Thompson could find it out and do it.

That he wanted to annoy Kennedy.

That Kennedy had commenced the game with him, and he would do anything he could to get even with him. That with proper deeds and powers of attorney, he could, on his return, look into the matters, and if he could find out any clue *whereby to sue* Kennedy, he would sue him. That he, Thompson, had the smartest lawyer in Mobile to do all his business, and the very fact that his lawyer had brought suit would scare Kennedy into a compromise of four or five thousand dollars, in order to buy his peace.

Thompson frequently remarked that refusing to make a deed to him, could be of no benefit *to him*—could be of no benefit to complainant—as Kennedy had already his title, and was in possession. That his, Thompson's, only object in wanting a deed, was to protect himself, and annoy Kennedy; but that, should anything be realized from it, complainant should have the benefit. In one of the interviews at the village, Primrose had represented that Thompson was worth some sixty thousand dollars. This was in the presence of Thompson, who did not dissent from it. From these representations, which complainant believed to be true, he was impressed with the idea that Thompson was a man of influence and wealth. Having, therefore, great confidence in him as a man, and believing him to be his friend, and hoping that some benefit might arise from the acts

suggested, complainant further consented to execute the deeds and papers required. Primrose was instructed to prepare them, and complainant accordingly made and delivered the following deeds and papers to Thompson:—

1. A deed conveying to him in form the Dubroca tract, near Mobile, and the land covered by the Alexander Baudain tract in the city of Mobile, the last being the same described in the first part of the bill of complaint, as recovered from Kennedy's heirs.

2. Two powers of attorney; one general as to all lands, the other limited to the land embraced in said deed, authorizing him to sue for, recover, compromise, or otherwise deal with them as he saw fit.

3. A bond in the penalty of seventy-five thousand dollars, conditioned that complainant should in no way interfere with him, Thompson, in the control or management of any of the matters arising under said deed and powers of attorney. Such, as the bill states, was the character and effect of the deeds and papers executed, thus executed by complainant to Thompson. They bore date on or about the 13 of January, 1844, and appeared to complainant to have been prepared with great care and comprehensiveness. Thompson stated that his object in having the papers drawn so strong was, that he might, if necessary, show them to the Kennedys, and thereby intimidate them. The bill further states that, during Thompson's stay at complainant's house, he gave him a silver watch, and left with him a double-barrelled gun. That immediately after the execution of the papers referred to, Thompson and Primrose seemed anxious to leave; and as there was no public means of conveyance, plaintiff procured them horses, and accompanied them to Anahuac, at the mouth of the Trinity, some twenty-five miles from Liberty. On separating at this place, Thompson handed complainant fifty dollars. Whether this was intended as a consideration for the deed, or as compensation for his services, was not stated. That complainant had been put to some inconvenience, was in poor health, his wife was confined to the house from a long spell of sickness, and he, therefore, considered these acts of Thompson in part as compensating for his services, but chiefly as presents from an old friend, on whom fortune had more kindly smiled. The bill further states that Joseph Collins, the father of complainant, was a Deputy Surveyor, under the Spanish Government, in Mobile, prior to the change of flags, and died in 1811, when complainant was about two years of age. That, till about nine years of age, he resided with his mother, at Pascagoula, and after this, in different places in the interior of Mississippi, till he was fifteen, when he was apprenticed to a house carpenter, in Mobile, by the name of Moore, with whom he worked till he was near twenty-one. During all this time, complainant's entire attendance at school, which was not continuous, did not exceed a year; and when he left the carpenter's shop, in January, 1830, he could hardly write his name. He next went to Covington, Miss., where he remained till 1836, and then removed to Texas. At the time complainant executed the deed and

papers to Thompson, in January, 1844, he had been absent from Alabama fourteen years; had scarcely any knowledge of the estate left by his father, never had possession of his father's papers, knew nothing of their contents, knew nothing of the nature or validity of his father's land titles, or the value of lands in and around Mobile. He did not even know that his father left a will till more than a year after this date. No information on any of these matters were given by Thompson to complainant in the interviews referred to, although complainant has since learned that he was familiar with them; but, on the contrary, all his statements were calculated to impress complainant that those titles were of no value, though they might possibly be of some use to Thompson, in his alleged controversy with Kennedy.

Such, the bill states, were the circumstances and impressions of complainant, when he separated from Thompson at Anahuac in January, 1844, and thus things remained with him until about the middle of January, 1845, when Thompson again called on complainant. He now represented that he had left Mobile with his wife for the purpose of taking her to Havana, for the benefit of her health, but after reaching New Orleans had concluded to change his course, and take her to visit an old acquaintance, a Mrs. Wharton, who lived on the Brazos, in Texas, where he had just left her. He brought some presents to Mrs. Collins and complainant, referred again to his controversy with Kennedy, and said he had brought suit against him in complainant's name. Complainant expressed surprise at this, and asked why the suit was not brought in Thompson's name, as he had a deed. To which he replied, the suit was so brought, because it looked better in the name of the original owner. He further said, he had not much confidence in the suit, but had got the Kennedys badly frightened, and it was probable they would send some one to see complainant about it. That he had spent a good deal of time and money in the case, and complainant must not answer any proposition the Kennedys might make, without consulting him, Thompson. That it had cost him already four thousand dollars, and complainant must be on his guard, or he might say something that would ruin the case. That if a person should be sent by the Kennedys, he would first depreciate the claim, and then perhaps offer something small in the way of compromise, and, if possible, during the interview would pick up some word or expression dropped by complainant, that might be used to ruin the suit.

That this was the first intimation complainant had, that suit had been commemced. At this time Thompson also stated, that if anything should be recovered, the shares of complainant's deceased brothers, George and Joseph, would vest in their mother as their heir. This was understood to be the law of Texas, and complainant supposed, therefore, that Thompson's statement was correct; and that in no event would complainant's share be more than a third of any recovery. Having produced these impressions on complainant,

Thompson left for Galveston, to which place complainant accompanied him, and there received from him fifty dollars. That a few days after complainant returned from Galveston, he was called on by a Mr. Platt, from Mobile, who told him that Kennedy's heirs were opposed to going to law, and would give to terminate it what would cost them to litigate it, but no more. This proposition was declined, and on the invitation of Mr. Platt, complainant accompanied him to Mobile, he, Platt, agreeing to defray his expenses. That complainant, after reaching Mobile, was introduced to Mr. Campbell. He spoke of his interviews with Mr. Platt and the offers made by him, but Mr. Campbell advised against a compromise as did also Mr. Thompson. That complainant remained in Mobile until after the April Term of the court, but had few interviews with Mr. Campbell, and derived from him no particular information as to the suit, his title, or his rights. From this period Collins visited Mobile, as the bill states, at every term of the court. There is a good portion of the bill appropriated to show that Thompson was particular in advising complainant not to converse with others about the suit, but as there could be no motive for this course but the success of the suit, it is not deemed necessary to notice it. The bill further states that whenever complainant visited Mobile from Texas, Thompson referred to the large sums of money he had paid out, and in January, 1849, he stated that the amount so paid out, and for which he was liable, was near ten thousand dollars, which would be increased as the suit progressed. That believing these statements to be true, and having ascertained that the share of his deceased brother would fall to him should a recovery be had, and being disposed to be very generous to Thompson, proposed to give him what was equal to the share of his said deceased brother. This proposition was satisfactory to Thompson, and it was carried into effect by having a proper deed drawn up, and executed by complainant. That Thompson at first refused to give up the papers executed in Texas, but upon a statement by Mr. Campbell that they were of no value, Thompson produced the old deed, and put it into the fire. The bill states that previous to this time complainant had signed an obligation to pay Campbell and Chandler a fee of $20,000, in conformity with an agreement previously made by Thompson. The bill further states, that after the hearing in this court in April, 1847, complainant returned to Texas, where he remained till February, 1851, after the decision of the case in the Supreme Court. He then came to Mobile, and on the day of his arrival, *on the day of his arrival*, met Mr. Campbell, who requested complainant to come to his office that evening. That complainant accordingly went there in company with Drury Thompson, and there found assembled together John A. Campbell, William F. Cleveland, James Campbell, and William D. Primrose. That John A. Campbell then said, that these four gentlemen, referring to Cleveland, James Campbell, William D. Primrose, and Drury Thompson, had been interested in the suit from the outset,

had all done valuable services, besides advancing large sums of money in carrying it on, and it was desirable that a settlement should then be agreed on, before any hard feelings should arise. What service had been rendered by any of them, or what amount of money had been advanced was not stated; the statement was general of valuable services and large advances, merely. This announcement of Mr. Campbell, as well as the meeting with these gentlemen on this occasion, was a perfect surprise to complainant, and the first intimation he ever had that Cleveland, Campbell, or Primrose claimed or pretended to claim any interest in the matter, or had rendered any service, or paid any money in the case, except that complainant had understood that Primrose had been employed to attend to the taking of some testimony. That before complainant could collect himself, or make any reply, James Campbell proposed to leave the matter to John A. Campbell to decide. This proposition was received by the other gentlemen, and a response appeared to be expected from complainant. Compelled thereupon under these circumstances to reply, complainant said that this was a claim wholly unknown to him. That complainant had, as Mr. John A. Campbell knew, an agreement with Mr. Thompson, which was certainly a liberal one on the part of complainant. That he wished to do what was right, that he knew nothing of the services said to be rendered by these gentlemen, or of the money advanced by them. That he supposed his counsel was acquainted with the facts, and he could not object, therefore, to referring the matter to him as had been proposed. That Mr. John A. Campbell then further stated, that the suit was not yet ended, that there was an account to be taken of the rents and profits and proceeds of sales, which if litigated it would be, might take some two or three years more to get through with. The question of boundary was also open, that the north line of the Baudain grant interfered with the Orange Grove, about which a suit was then pending between Hall and Carter and the Orange Grove Company. That no division could be made between the Kennedys and complainant until this boundary was settled. That these gentlemen, referring to the defendants and Primrose, had not only been of great service, but would also be required in getting proofs as to the rents and the boundary.

Further advances of money might also be required, and the case might again go to the Supreme Court on these open points, which would require still larger advances; and that in view, therefore, of all the circumstances, he thought these gentlemen were entitled to two-thirds of all that might be recovered, or $\frac{1}{6}$ each. That this decision seemed to be assented to by all the gentlemen referred to, except Primrose, who objected that he had done more in the case than any of them, and that the division ought to be in proportion to the services rendered by each. Mr. John A. Campbell appeared to pay no attention to the objection of Primrose, but proceeded at once to draw up an instrument in writing for the purpose of carrying into effect his decision, which, omitting the name of Primrose, gave to

Thompson, Cleveland, and James Campbell, two-thirds of the whole property recovered, whatever it might be.

This instrument was immediately executed by the parties named in it, and the next morning complainant met Thompson, Campbell, and Primrose, at the office of the latter, by request, and was then required by them to enter into a covenant to obtain his wife's relinquishment of dower.

For this purpose Thompson copied the paper executed the previous evening at Mr. Campbell's office, adding at the end the covenant required. In this new form it was again executed in triplicate, and bore date the 15th February, 1851; a copy thereof is annexed, marked Exhibit A. The bill further states, that the whole time occupied at this meeting at the office of John A. Campbell, was not over an hour. That complainant was wholly unprepared to act with any judgment in a matter so deeply affecting his rights and interests, because wholly without the knowledge requisite to guide him; was unadvised both as to the object of the meeting, and the persons who were to be present; supposed he was to meet only Thompson and Campbell. Had no time for reflection; no opportunity for private consultation with his counsel or supposed friend. Had not seen the opinion of the Supreme Court; had not even read the bill in the case; was not in possession of the property; had no information of its value, or any idea of the amount he was then suddenly called on to give away. In signing this instrument, complainant was guided solely by his confidence in John A. Campbell and Thompson, and his belief of the truth of their statements. That he had just heard of his success in the suit, and was disposed to deal liberally with those who had aided him; and though surprised at the number of the claimants, and the amount awarded them, he yet considered that it was the judgment of his own counsel and attorney, and felt bound, therefore, to yield to it. That it was stated in the office of Mr. Campbell, and also in that of Primrose, that the deeds executed were never to be put on record; and that after the complainant was put in possession of the property, and the boundary was settled, new deeds were to be made. In May, 1851, while in Texas, complainant received a letter from Thompson, marked Exhibit B. This letter, for the first time, created a suspicion that all was not right; and on complainant's return to Mobile, in June, he found that no progress had been made in the settlement of the suit, and that the difficulty was not with the executors and heirs of Kennedy, but with complainant's solicitor, Mr. Campbell, who, with others, pending the suit, had become interested in a lot sold by Joshua Kennedy to Campbell and Cleveland. This lot was at the northeast corner of St. Louis and Water Streets, containing 100 feet on each street, and was within the boundary of the land recovered. John A. Campbell insisted on having an alley on two sides of this lot, and founded his claim on some alleged agreement made between Kennedy and Cleveland and Campbell. This claim was finally presented by John

A. Campbell, in connection with his claim for a fee, and made a *sine qua non* in one form to any amicable settlement with him, as will appear by his letter, marked Exhibit C. After this letter, Campbell and Cleveland withdrew all opposition to the claim of the alleys. To this claim complainant was finally induced to yield, and executed a deed for it to John A. Campbell, Moses Waring, and Joseph Wiswold.

That having arranged all matters growing out of the suit, and being obliged to leave the State for a time, complainant made James Campbell and Cleveland his agents during his absence.

That after his return to Mobile, arrangements mere made for improving the property and paying the debts. For this purpose, ten thousand dollars were borrowed of Wm. Jones, Jr., and the debt secured by mortgage on part of the property. Portions of the property were afterwards sold to different persons, at different times—the proceeds altogether amounting to about $92,000; and this afforded to complainant the first evidence of the great value of the estate he had recovered. The building contracts were made in the names of Collins and Cleveland, also some of the leases of the improved property.

This was done at the instance of Thompson, Cleveland, and Campbell, and before complainant had discovered any of the frauds which they had practised on him. His suspicions were at first excited by the singular remarks made by these parties, and their anxiety to obtain from him some confirmation of the deed of February, 1851, and became at length painfully increased, so much so, that complainant was compelled to seek legal advice. For this purpose, complainant applied to Daniel Chandler, Esq., and stated to him his belief that he had been overreached in the deed or agreement of February, 1851, and that he might be obliged to question its validity as soon as the property could be released from its incumbrances, and stated that he did not wish to do anything that could be considered as in any manner ratifying that instrument. Complainant also stated, that he was willing to make them compensation out of the rent for any service they had rendered him. Mr. Chandler advised complainant to notify the tenants that he claimed the whole property, but was allowing Cleveland to have a part of the rents in compensation for his services. It was in consequence of this advice, that complainant consented to lease any part of the property in the name of Collins and Cleveland. Complainant considered that he had employed Mr. Chandler, or the firm of Chandler, Smith & Herndon, of which he was then a partner, as his counsel. He frequently consulted with him on the subject until the summer of 1854, when complainant was informed that the said firm was retained by Campbell and Cleveland. That a few weeks prior to this, complainant had addressed a letter to John A. Campbell, stating in substance, that he had discovered that he had been defrauded by Campbell, Cleveland, and Thompson, and wishing him to use his influence to get

them to do complainant justice, and offering, through him, to give each of them a store of the value of $18,000 for an amicable settlement.

This letter also stated that complainant had employed Messrs. Chandler, Smith and Herndon to bring suit in case the matter could not otherwise be arranged. This letter remained unanswered, and although marked confidential, has been, as complainant is informed, communicated to defendants, or some of them. Complainant has no copy of this letter, and speaks of it only from recollection. That the portion of property leased in 1853–4, in the name of Collins and Cleveland, was again in 1854 leased for 1854–5, in the same names by Cleveland; but this was without complainant's knowledge or consent, and that Cleveland had no authority to use complainant's name in any way or form whatever. That soon after the deed of February, 1851 was executed, Thompson and Cleveland began to talk of things that were in the way of a quiet possession of the property. They said there was an older title, the Lewis Baudain grant; that Primrose could ruin the title; that he knew of a large debt owing by complainant's brother George, in Mississippi, amounting to some fifty thousand dollars, which the property could be made to pay; that he was an unprincipled man, could have anything proved he wished, and that it might be dangerous to complainant's personal safety to associate with him. That these and similar statements put complainant in such dread of Primrose, that he was afraid to speak to him, and avoided him whenever he could. That after complainant refused to sign an instrument of writing presented him *on behalf of Thompson*, on behalf of Thompson, Cleveland and Campbell, for the purpose of obtaining a confirmation of their claim for two-thirds of said property, the said Thompson, Cleveland and Campbell attempted to frighten complainant into a compliance. They said, unless complainant confirmed their claim, he should lose the whole property; that complainant's father was an alien both to the Spanish and American governments, and that by a law of Mississippi Territory, the lands of all aliens escheated to Jefferson College; that the law was in force at the time of the death of complainant's father, and that it would not be a hard matter to escheat half the property in Mobile. They also said there were secret frauds about the suit, which if known would upset it; Cleveland said there was a fraud committed in it by Primrose and John A. Campbell, which, if exposed, would throw the whole property back into the hands of the Kennedys; that he, Cleveland, would tell Dr. Hastie, who was the bull-dog among the Kennedy's heirs, and he would at once bring suit and recover the property back; that he, Cleveland, was able to live without it, and did not wish to leave his children rich. In this manner complainant was continually disquieted and harassed, until January, 1855, when, having failed in their object by threats, Cleveland changed his plans, and attempted to regain complainant's confidence by offering to redress his wrongs. He now said that Primrose

was acting wrong with complainant in the Krebbs matter, and requested that this might be repeated to him, and that he might be told he could and must make it right. He also said he could tell things on Primrose that make the hair rise on one's head. Such, the bill states, are the facts and circumstances of the case, so far as known to complainant from January, 1844, to January, 1855, but they constitute, unfortunately, not its whole history. There was an under-plot previously planned, and during the whole time artfully concealed from complainant by defendants, which disclosed, exhibits the transactions in a different light. This under-plot of fraud, suspected in part merely by complainant in 1852 and 1853, was not fully discovered and made known to him till after January, 1855; and complainant affirms, that by no diligence on his part could it sooner have been discovered by him.

From these facts and circumstances now known to him, and believed to exist, complainant specifically charges as follows, to wit:—

1. That as early as 1842, defendants Thompson and Cleveland had combined together in connection with Primrose, to obtain by unfair practices, for their own sole use and benefit, all the real estate to which complainant's father was in anywise entitled at the time of his death, and particularly a piece of land in Mobile, bounded on the north by State Street, on the south by St. Louis Street, on the west by Royal Street, and on the east by the river, which is the same as that covered by the Alexander Baudain grant, or Collins tract, before referred to.

2. That this combination to defraud complainant was based on the legal opinions of John A. Campbell and Daniel Chandler, previously and separately given, the one in writing, the other verbally, after a thorough examination of his title *commenced in*, commenced as early as 1839, which opinions were favorable to its validity, and to its capability of being established by suit, and upon the expressed willingness of Campbell and Chandler to undertake as lawyers its enforcement against the representatives of Joshua Kennedy.

3. That before Thompson came to Texas, in 1844, he and his confederates had also obtained the opinion of Wm. J. Vandegraff, an able lawyer then residing in Mobile, as to complainant's title and right, which corresponded with those of Campbell and Chandler, and had also seen the testimony of Samuel Kitchen, taken in the suit of the heirs of William E. Kennedy against the executors and heirs of Joshua Kennedy, afterwards referred to in complainant's bill of complaint against Kennedy's heirs and others, and were fully advised of its effect.

4. That previous to January, 1844, Campbell and Chandler were employed by Thompson, Cleveland, and their confederates, as their attorneys and counsellors to advise them as to the course to be pursued, and to bring suit upon complainant's title, when it should be obtained by them.

5. That the object of the visit of Thompson to Texas in 1844,

was not business in other parts of it, as he fraudulently pretended, but solely to find out complainant, and obtain from him his title to all said lands, and his irrevocable powers of attorney, so as to enable Thompson and his confederates exclusively to manage and control the same to their own sole use and benefit.

6. That in the interview in Texas in January, 1844, Thompson was acting under the advice of John A. Campbell. That the said powers of attorney and bond then executed by complainant to Thompson were not drawn then impromptu by Primrose as complainant was led to believe, but were copies from drafts previously prepared for the purpose by John A. Campbell in Mobile.

7. That the statement of Thompson on this occasion that Kennedy was trying to take his residence from him, was without any foundation in truth, and was intended by Thompson to excite the sympathies of complainant in his behalf, and to form an excuse for asking for a deed. That his residence in the country was too inconsiderable, and in its position too remote from any claim of the Kennedys to have either excited their cupidity, or attracted their notice. It was more than a mile west of the west line of the Dubrocca tract.

8. That before the suit was commenced, it was distinctly agreed and understood by and between Thompson and his confederates, under the advice of John A. Campbell, that complainant should be kept in ignorance of its existence, and that his residence should be concealed from the defendants.

9. That to effect this purpose in part, complainant, though well known to Thompson, his confederates and solicitors, to be a citizen of Texas, was yet in the bill of complaint described as a citizen of the State of Missouri.

10. That the suit was not brought in complainant's name from choice "because it looked better in the name of the original owner" as by Thompson fraudulently pretended, but only from necessity, because the right could not be enforced in any other name, all of which was well known to Thompson and his confederates when said suit was brought.

11. That James Campbell was not an original party to the combination against complainant, but was admitted to it only in December, 1844, about seven months after the suit was commenced. This Press property was embraced within the bounds of the land claimed, for which he held the warranty of Joshua Kennedy, and this, in case of eviction by complainant's claim would be available for more than thirty thousand dollars. He was also able to make any advances which might be requisite for carrying on the suit. These considerations furnished sufficient motives to both parties for his admission to their speculations, but none whatever to complainant for dividing with him his inheritance.

12. That the visit of Thompson to complainant in Texas in January, 1845, was for the sole purpose of anticipating that of Mr.

Platt, herein before referred to, and thereby prevent any unfavorable impression that might otherwise have been made upon complainant by divulgence to him of the existence of the suit from the other side, as well as to guard complainant from any act that might have been prejudicial to Thompson and his confederates, and that a knowledge on their part of the intentions of the Kennedys to send a messenger to complainant was the only thing that compelled them to send Thompson off.

13. That the statements of Thompson on this occasion, as to the purpose of his visit as on the previous one were untrue, and intended to deceive complainant, and to conceal from him the real importance of the suit, by making the reference to it appear merely secondary and accidental matter. That the statement also as to the descent of the estate of complainant's brothers, though in accordance with the law of Texas, was not with that of Alabama, which alone covered the case, and that was well known to said Thompson, but that he misstated the law on purpose to make complainant believe that his interest was but one-third, even should any recovery whatever be had.

14. That the visit of complainant with Platt to Mobile in February, 1845, was unexpected to Thompson, Cleveland, and Campbell, and their solicitors, and was unwelcome. That it was expressly agreed among them, that complainant should be kept in ignorance of the agreement they had entered into in regard to his estate, as well as of its value, and for this purpose it was agreed among them and Primrose, that the latter should not converse with complainant on the subject, and that complainant should be dissuaded from making any inquiries of him about the said suit or estate. That this is the reason why Thompson spoke so frequently to complainant disparagingly of Primrose, and why so solicitous that complainant should converse with no one on the subject of the suit, or the matters involved in it except himself.

15. That by the agreement made by complainant with Campbell and Chandler for a fee, they became his attorneys and counsel in the case, and this relation continued until after the entry of the final decree in the cause in December, 1851, and yet on the part of the said Campbell and Chandler it was no more than a nominal relation. They considered their obligation to act as the counsel of the combination paramount, and never failed to sacrifice complainant's rights and interests whenever they came in conflict with the wishes and interests of defendants, Thompson, Cleveland, and Campbell.

16. That the statements of Thompson as to his large advancements and heavy liabilities so often and so specially made to complainant from January, 1845, to January, 1847, were, if not wholly untrue, as complainant now believes them to be, the grossest exaggerations, and intended falsely to impress complainant with his magnanimous friendship, and the great cost of maintaining the suit,

and to induce complainant to offer him as a compensation a large portion of the property that might be recovered.

17. That the agreement obtained from complainant in January, 1847, by Thompson, for the benefit of himself and his confederates, did not long satisfy their insatiate appetite for gain; success had emboldened them, and before the suit was terminated, new elements were not wanting to increase and strengthen their demands. Alleys would greatly increase the value of the Campbell and Cleveland lot, now become the property of John A. Campbell and others. These could only be secured by the aid of Campbell and Cleveland, and what would then be lost to the combination, would be more than compensated by the lion's share awarded them. The results were the deeds of the 15th February, and the 19th July, 1851.

18. That the meeting at the office of John A. Campbell, in February, 1851, before referred to, was previously agreed on, by and between the defendants, Thompson, Cleveland and Campbell, the programme prepared, the parts assigned, the decision of the arbitrator known, and his influence relied on by the defendants to carry it into effect.

19. That the statements made by John A. Campbell at this meeting, February, 1851, were intended to deceive complainant, and unduly influence him into a submission which ought never to have been made, and which complainant's counsel in the proper discharge of their duty would never have advised.

20. That the statements of John A. Campbell on this occasion as to the large advances and valuable services of defendants in the case were untrue.

21. That in this transaction, John A. Campbell, whose duty it was to advise complainant, and on whom he relied on for protection, advised and acted for the defendants alone, and in opposition to the rights and interests of complainant.

22. That the deed drawn by Campbell and redrawn by Thompson, with the addition of the covenant for the relinquishment of dower in February, 1851, though falsely reciting considerations, was without any consideration, and was obtained from complainant while the land was held adversely to both parties, and was in suit, through ignorance, mistake and implicit confidence on the part of complainant, and by misrepresentations, concealment of the truth, collusion, and undue influence on the part of the defendants and their attorneys, and is therefore null and void.

23. That the deed of July, 1851, was also obtained under similar circumstances and similar means, with the addition of threats and coercion. That the alleged agreement of Kennedy for alleys, was a mere matter of assertion, having no existence in fact, unsupported by any competent evidence, and whether susceptible of proof or not, wholly incapable of enforcement against complainant.

24. That instead of the addition of the alleys, the lot itself, was sold by Kennedy for half its estimated value, and his deed, a copy

of which is hereto annexed, marked Exhibit F, contains, as complainant believes, the only and entire contract he made with his vendees on the subject of the said lot, all of which was well known to defendants, but wholly unknown to complainant, when he executed the deed of July 19, 1851.

25. That since 1851 various attempts have been made on the part of defendants, by means of misrepresentations, undue influence and threats, to induce complainant to make to Thompson, Cleveland and Campbell a new deed, which should operate as a conveyance, or as a confirmation of that of 15 February, 1851, and thereby assure to them a title to two-thirds of all the estate recovered by complainant in said suit, and particularly to sign a paper prepared by their attorney, a copy of which is hereto annexed, marked Exhibit H.

26. That the bond or covenant made by William F. Cleveland to Joshua Kennedy, which formed a part of the consideration of the settlement made between complainant and Wm. R. Hallett acting executor of Kennedy was by collusion among the defendants, and without the knowledge or consent of complainant, delivered to said Cleveland, and is now withheld from complainant, and his right to it denied.

27. That all the interviews between complainant and defendants, or any of them, touching complainant's affairs from the first to the last, there has been a studied and agreed suppression of the truth, so far as it was deemed necessary to mislead him, as well as constant and reiterated misrepresentations, fraudulently intended to influence complainant to his own injury and to their benefit.

28. That the defendants sometimes pretend that said agreement and deeds, though originally void, have by the acts of complainant since been made valid and confirmed, whereas complainant charges the contrary to be true. That whatever complainant has since done that might unexplained countenance such a pretence, was done in ignorance of his rights and the facts of the case, and under the influence of the various unlawful practices of defendants, brought to bear upon him for the express purpose of obtaining such a confirmation. That the mode and form of settling and securing the fees of the attorneys, were devised and prepared by the attorneys in the case, or one of them, and the building contract, and leases, were also prepared by the same, or some other attorneys for the defendants, and with the intent, as complainant now believes, of affording evidence of confirmation by him of the deed of 15 February, 1851, but they were executed by complainant in ignorance of the frauds that defendants were attempting to practise upon him, and under the advice of counsel, in whom, as yet, he had confidence.

29. That all the money ever advanced necessarily in the prosecution of the suit, as complainant is informed and believes, were less than fifteen hundred dollars, and but little, if any, exceeding one thousand.

30. That it has sometimes been pretended that Cleveland paid to

John A. Campbell before the commencement of the suit, one thousand dollars on complainant's account, whereas complainant charges the contrary to be true, that said money was paid by James Campbell, and not for complainant, but for the sole purpose of having a notice served on him, that complainant claimed of him the back rents of the Campbell and Cleveland property, in order to enable said Campbell to resist a claim for the same back rents from the Branch Bank, and to get time and a settlement with said bank, on terms favorable to him, and which complainant is informed, he was thereby enabled to do. Such a notice was wholly useless to complainant and was wholly unauthorized by him, as was also said pretended payment.

31. That the defendants, since *since* the termination of said suit, rec'd from complainant, and from the proceeds and rents of his estate so recovered as aforesaid above, the sum of twenty-five thousand dollars in cash, and are claiming and receiving two-thirds of the annual rent, and refuse to apply any part thereof to the payment of the debts for which the estate is mortgaged as above set forth, to which payment said income, as far as necessary, was first to be applied, and are misapplying said income and leaving said mortgage debts unpaid, and are stimulating the mortgagee to proceed and foreclose the mortgage for the purpose of further oppressing complainant and compelling him to sacrifice his interests.

32. That the annual rent of said estate is about fifteen (15) thousand dollars. The defendants are now renting or have rented for the next year, terminating on the first of November, 1856, two-thirds of said estate, and obtained notes and other securities for the same, and have appropriated the same to their own use, and refuse to apply any part of it towards the payment of said mortgage debts.

33. That the value of the estate unsold, according to the sales of 1852, 3, is about two hundred and fifty thousand dollars, and that the defendants, if sustained in their fraudulent scheme against complainant, will have obtained from him in cash and valuable real estate about the sum of $200,000, without any consideration whatever.

34. That complainant is willing to allow the defendants to retain out of the moneys they have received a liberal compensation for any advances of money they may have made on his account, or for any services they may have rendered him in the case, and has requested them to come to an amicable settlement for the sake of avoiding a suit, and has made them the most liberal offers; but so it is, &c.

The bill concludes by praying that the defendants may account for moneys received, &c. That they be restrained from collecting any rents, and from selling any portion of the estate.

The bill further asks that a receiver may be appointed, &c.

Part Second. Portions of Answers, and Opinion and Decree.

Answer of Drury Thompson.

Thompson, in answer to complainant's narrative in his bill, says—

1. That complainant's allegations in respect to the representations, negotiations, and dealings with respondent in Texas on his first visit, are untrue.

Whilst a youth residing in Mobile, respondent became acquainted with George E. Collins, the elder brother of complainant, then a youth also. Respondent learned from the old creole population that Joseph Collins, the father of complainant, had been in the service of the Spanish government at or near Mobile, and had held interests in lands in Mobile and its vicinity. This brought about conversations with George on the subject, and respondent urged him to look up his father's papers and to see what were his rights, if any. Said George made an effort to look into these matters but without success; he became convinced from representations which had been made to him that his father and mother had never been married, and that his father's titles, if any, could not be made available, and he abandoned the pursuit, and with complainant sold out his claims to Joshua Kennedy soon after their arrival of age. The vague idea that the heirs of Collins had some rights became impressed on respondent's mind. He had spoken of it to others, and had expressed the belief that something might yet be got from it. Some years afterwards, in a conversation with Wm. D. Primrose, respondent found that he too was under the impression that there were grounds for the institution of a suit against Kennedy's heirs for the lands between St. Louis and Orange Grove, and the Dubroca tract. George and Sidney had left Mobile several years before, and respondent was ignorant of what had become of them. Respondent conversed with Wm. F. Cleveland on the subject, but who knew very little of the matter, and the result was that in November, 1842, Primrose, Cleveland, and respondent, agreed to look up the heirs of Joseph Collins, and buy out any rights they might have in their father's estate, and sue for the same. They heard that complainant resided in Texas, and, early in 1844, respondent and Primrose, without having consulted, so far as respondent knows, any attorney, and without having taken any legal advice, went to Texas partly on other business, but chiefly to find complainant, and to make some arrangement with the heirs of Joseph Collins for buying out their interest.

Respondent did not know until long after his return from Texas whether the laws of Spain or Alabama would regulate the descent of Joseph Collins' estate, he having died before the exchange of flags, and under a *de facto* government of Spain. Nor did he know whether complainant was under the law entitled solely, or with his mother, to the estate, if any. Respondent and Primrose, early in January, 1844, went to Liberty, in Texas, near which they had heard complainant was, and met him. Respondent conversed with him, and inquired

of him in relation to the sale made by him and his brother George to Joshua Kennedy of their interests in Mobile, and told him that respondent had long been under the belief that his brother had been misled by representations made by him, and that he and his brother had thereby been induced to convey their interests of great value, that at the time complainant executed his deed to Kennedy he could not have been of age. Respondent knew said Sidney in Mobile when a boy, and had arrived at this conclusion by a comparison of said Sidney's age and appearance as to age with respondent's own age. Respondent told complainant at said time that in consequence of his minority when he made the deed, and on the ground of misrepresentation by Kennedy, and of his and his brother's ignorance of their rights, suits could be instituted with a prospect of success. That respondent was willing to undertake and take the chances. That if respondent succeeded he was willing to give him for the property ten thousand dollars, and to litigate and prosecute the suit would probably cost ten thousand dollars more.

Complainant assented to the proposition, and expressed a doubt whether the deeds executed by himself and brother could be got over, and saying if they could he would like it very much, and if he could realize seven good negroes for it he would be satisfied. In accordance with this understanding complainant executed and delivered to respondent a deed, bond, and power of attorney, copies of which are appended to this answer and made a part of it, marked A, B, & C.

Respondent, pursuant to this agreement with complainant, gave him a written undertaking, which is hereto appended, marked (A), the original of which is in the hands of complainant. Respondent does not know, but supposes, Primrose may have been a stranger to complainant when they met in Texas. It is untrue that respondent or Primrose, so far as your *orator* knows, represented to complainant that they had been on business in other parts of Texas, and were on their return to Mobile.

Respondent in*form* complainant that he and Primrose had come from Galveston to Liberty on a small steamboat. Liberty was about north from Galveston, and this information in itself contradicts the idea that they had come to Liberty on their way to Mobile.

Respondent expressed pleasure at meeting with complainant, and did refer to reminiscences of their former acquaintance in Mobile. Respondent was once, or more, at complainant's house, on his invitation, but did not stay several nights at his house. Respondent did not refer to complainant's lands in Mobile in a casual way, but referred to them in the direct manner hereinbefore set forth. He did, in his conversation with complainant, ask him if he had executed any deeds for them, and asked what Kennedy had given for them.

Respondent did inform complainant that Joshua Kennedy was accused of cheating in lands, and expressed the belief that he and his brother had been induced to make deeds to Kennedy by misrepresentation and in ignorance of their rights. Respondent denies

that he told him that Joshua Kennedy, or any one else, was trying to extend the Dubroca tract over respondent's residence, or that his residence was near said tract, or that he said anything to complainant about writing a deed for any such purpose as is alleged in the bill. He told complainant that Joshua Kennedy was dead. Respondent says, that after the contract was agreed on and understood with complainant, but whether before or after the papers were executed, respondent does not know. In the course of a conversation with complainant he told him, and truly, that Joshua Kennedy had so located his Murrell (not Dubroca) tract that it covered respondent's land on Spring Hill Road, and that he had been thereby forced to relinquish a large portion of *of* the ground on which his residence stood. Respondent, at the same time, spoke of the heirs of Kennedy making efforts to extend the location of the Dubroca tract over a part of other land, owned by respondent and others, and that he thought complainant's deed would fortify him in that quarter. Respondent denies that he told complainant any such thing, as that he would pay to complainant whatever advantage the deed might be to respondent.

Complainant expressed no reluctance in making a deed to respondent; made no objection, on the ground that it would be making a deed to lands he had already conveyed; received no such encouragement in reference thereto as are set up in the bill.

Complainant told respondent that he had made a deed to the land, which has since been recovered in the chancery suit, but, in reference to the Dubroca tract, he stated that he did not remember having made any deed, and said he had once given a power of attorney to his brother in Mississippi to sell some lands, but he thought that only applied to some land in Mississippi. The whole story in the bill in reference to a quit claim, and respondent's advice in reference to it, are mere fabrications of complainant. Respondent refers to a copy of the deed before referred to in this answer. He will produce the original at the hearing. This deed is not a quit claim, and complainant so knew it, and, knowing it, required of respondent the bond, a copy of which has been appended to this answer, marked (d). Complainant readily acceded to respondent's proposition to convey to him, as before stated, and was pleased and satisfied at it. He assented readily, and not finally or reluctantly. During their interview, and after the matters embraced in the deed were understood, complainant and respondent had a general conversation or conversations about complainant's land claims. He did tell complainant that he was clerk of the County Court of Mobile, and keeper of the records, and could look into the matter, and did propose that complainant should give him a general power of attorney, and complainant did execute the power of attorney, before appended to this answer. The power, however, was made general as to all complainant's lands, with a view more particularly of covering certain supposed claims of complainant's father in Ohio, in reference to

which some vague paper existed, and in no expectation under it of finding other claims in conflict with Kennedy's. No idea existed, or was expressed, of annoying Kennedy's heirs (Kennedy was dead, and so respondent told complainant), by reason of any action under the power in reference to other lands in Mobile than those conveyed in the deed. Respondent did tell complainant that he expected to employ Mr. Campbell to sue Kennedy's heirs for the lands in the deeds. He told him Mr. Campbell was his lawyer, but did not tell him that he was his lawyer in reference to this matter, nor was such the fact. On the contrary, respondent had never spoken to Mr. Campbell or Mr. Chandler, his partner, about the matter, and never employed, or offered to employ, either of them until his return from Texas, and then spoke to Mr. Campbell, who peremptorily refused to look at a paper in the case or talk about it until I had paid him down in gold $1000. Mr. Campbell required it in gold, and it was so paid. It is true he did say Mr. Campbell, who was generally his lawyer, was the smartest lawyer in Mobile, and this statement merely asserted what was notorious to the people of Mobile.

Respondent denies that Primrose, in his hearing, or with his knowledge, represented respondent as being worth sixty thousand dollars, or any other sum. If Primrose made any such statement, it was untrue. Respondent did nothing and said nothing to obtain the confidence of complainant, further than as before stated. He does not suppose that complainant, who represents him, in another part of his bill, as accomplishing a matter of negotiation with William R. Hallett, who is esteemed as one of the finest financiers in Mobile, was so stolid and void of penetration and so childlike as to suppose that respondent's whole aim and intention was to ferret out and carry through an important suit or suits at his own costs, solely on the ground of acquaintance with complainant in his boyhood.

Respondent says that complainant is a shrewd, sensible and intelligent man, alive to his interests, and prompt and ready to enforce his rights. This matter was under discussion for several days before it was consummated by executing the papers; was deliberated on by complainant, and was finally executed with a full knowledge of their purport, and the uses to be made of them. Primrose, for some reason not remembered, did not draw the papers, as it was agreed he should do. Respondent afterwards drew them, the papers drawn were executed, and copies are appended to this answer. A reference to them will show that they are not properly described by complainant. But one power of attorney was drawn or executed.

Besides these papers, respondent gave complainant a bond, which he has retained, to protect him against all costs and expenses. It is before set out in this answer. The transaction in Texas summed up was this: Respondent thought that complainant's rights would justify the risk and trouble of a long, expensive, litigated suit or suits. Complainant felt inclined to enter into no such litigation, at the risk of the costs, expenses, and uncertainties attending the same,

but was willing and anxious for respondent to undertake and carry on these matters at his own costs, trouble, and risk, if he, Collins, could get $10,000 on recovery, and lose nothing if the matter failed; and on this basis it was managed.

The expression of the complainant was that he would be satisfied if he could realize out of the matter seven or eight good negroes. Respondent says it may be true that the papers executed by complainant appeared to him to have been prepared with great care and comprehensiveness; that he was a cautious and sensible man, and no doubt examined and considered them well. Respondent does not remember saying anything *anything* about wishing to show the papers to the Kennedys, or thereby intimidating them. That during his visit to Liberty, and after the papers had been executed, he did present complainant with a double-barrelled gun and silver watch. That he and Primrose left the next day for Galveston, by way of Anahuac. They evinced no haste to leave, as respondent remembers. Complainant accompanied them to Anahuac, about twenty-five miles from Liberty; they went on horses procured by complainant; and on separating, gave complainant fifty dollars. He does not remember having any motive in the act, other than to give a small sum to an acquaintance who had been put to inconvenience on respondent's account. Complainant and his wife seemed to be in poor health. That, with the aid of the other gentlemen, his co-defendants, and Primrose, he has not only ferreted out and prosecuted to success the rights of complainant, which there was little or no probability of his ever discovering or enforcing, but they have entered into no bargain with him, which he was not ready and anxious to make.

Respondent has kept nothing concealed from him as to his rights, but told him at first they were large and valuable. That from Collins' intelligence, respondent does not believe he knew nothing of the value of lands in and around Mobile, though it may be that he had no exact or accurate knowledge of their value. He supposes complainant had but little knowledge of the estate left by his father. He does not know whether he ever had possession of his father's papers. He does not know what knowledge he may have gained respecting their contents, but supposes he and his brother George must have talked much about his father's matters. They were intimate and friendly in Mobile, and lived together in Mississippi. Respondent does not know what was his knowledge of his father's will. In the interviews referred to, respondent gave him the information before set forth in his answer. He told him that the estate was large and of great value, and that he thought suits could be instituted with a prospect of success. Respondent had seen what purported to be his father's will, but could gain no material information from it. It is untrue that respondent was familiar with said matters; he had a general knowledge, such as induced the belief which he expressed to Collins, and the action which he proposed to take. Respondent denies that his statements or acts were calculated to

impress complainant with the idea that the titles were of no value to complainant, or that they would only possibly be of value to respondent in his controversy with Kennedy. Respondent does not remember whether or not he wrote to complainant in the interval of time between their parting in Texas, and respondent's visit, in 1845. He did not see him in the interval, and nothing had transpired that was material, except the bringing of the suit. The answers had not been filed when respondent left home. Respondent visited complainant in 1845. He told him that his wife was in ill health, and that he had intended taking her to Havana, had he found a steamer, but not doing so, he had taken her to Mrs. Horton's, an old and intimate friend, in Texas. The statement was true.

Respondent expressly told complainant that when he left home he intended to visit him before returning to Mobile. He did take some presents to Mrs. Collins and to complainant, spoke of the controversy with Joshua Kennedy's heirs, and told complainant that he had brought suit in complainant's name. That defendants were badly alarmed, and were about to file their answers, and respondent, instead of depreciating the prospects of a recovery, expressly told complainant that he was sanguine of success; that Kennedy's heirs would probably send some one to propose a compromise, and that he must not accept it, and must be on his guard, as the agent would probably try to pick up something from the conversation that might injure the suit. Respondent remembers of complainant making no objection, not of expressing any surprise that the suit had been brought in complainant's name. He did tell complainant that he had spent a good deal of money and time on the case, and that he must not consent to any proposition the Kennedys might make him. Respondent feared a compromise might be made with complainant, as he understood the heirs of Kennedy were about to send an agent to endeavor to effect a compromise, and was particular to lay before complainant fully all that he knew about the case and its merits, and to inspire him with strong hopes of success, in order that he might not be inclined to accept offers that respondent was convinced would be made, and were shortly afterwards made. Respondent denies that he told complainant that the matter had cost him four thousand dollars. Respondent advised him that the agent would depreciate the claim, and gave him full possession of its value and merits, in order that such efforts might prove abortive. The allegations in the bill respecting the law of descents, which governed his father's estate, are untrue. He told complainant that his father, by his will, had given his estate to his children, but he had learned that before that, conveyed a portion of his estate to complainant's mother, by the name of Elizabeth Wilson, and that he did not know what rights she might have. When respondent left complainant's house, and returned to Galveston, complainant accompanied him to Galveston. Respondent gave him fifty dollars. He seemed to need it, and then seemed grateful for it. Respondent is informed and believes that, not long

after respondent left, Col. Platt, the agent of the Kennedys, called on complainant and offered some considerable sum as a compromise, but respondent does not know what it was, nor does he know what transpired between them. Complainant was quite too shrewd a man not to see in these facts, that his rights were important and promising, and from his refusal of the offer, and his resolution carried out in coming to Mobile to look into the matter, respondent believes that complainant attached equal importance to his rights, and was resolved to look minutely into, and ascertain them, for himself, as he did fully.

The above contains so much of the answer of Thompson as relates to the occurrences in Texas between himself and the complainant, and as this forms a distinct branch of the case, having no material connection with the merits of the controversy, it will be disposed of before proceeding any further in the examination. The answers are of such great length, made so by the prolix character of the bill, that they will not be set out at length, but only such parts as are considered necessary to a proper understanding of the case, and as will fully exhibit the merits of the defence.

It is proper at this point to ascertain the true character of the complainant Collins, for intelligence, and his capacity for the transaction of business. The account he gives of himself in the bill, leaves the impression that he is an uneducated, ignorant mechanic, with but little knowledge of business, beyond his vocation as a carpenter; ignorant of the affairs and transactions of mankind, and by no means equal to the defendants in skill for making bargains and contracts, and such as were consummated in this case. This is an erroneous impression. Thompson says in his answer, that he is a man of much caution, of a keen sense of the rights of property, of an active and investigating turn of mind, and that in all respects he is in no wise inferior to either of the defendants to the bill; his manners, appearance, and language, all indicate that he is a man of good information, and has mingled much and profitably with the world. The defendant Cleveland, says, that he is a shrewd, sagacious, intelligent man, keenly alive to his interest, and cautious in guarding it. To show the extent and character of his intelligence and information, Thompson, in his answer, gives an extract of a letter from complainant in relation to the annexation of Texas to the United States, and it fully disproves the statements in the bill as to the character and condition of his intellect. Some of his letters are to be found in the record, and they clearly prove that his education is far better than what he states it to be in the bill. Thompson says the complainant informed him that he had followed the business of a merchant, in Mississippi, and kept a hotel in Texas. From the evidence afforded by his letters and his personal appearance, I concur in the opinion that he is a man of sense, prudence, and discretion, and quite the equal in these respects to either of the defendants.

Indeed the plaintiff boasts, in the bill, that he succeeded in ac-

complishing a settlement with Mr. Hallett, the executor of Kennedy, which Mr. Campbell, his attorney, had failed to make, and which removed all difficulties and objections to a final adjustment of the matters in dispute between the parties. It is in evidence too, that he held the office of School Commissioner for the county and city of Mobile, a place to discharge the duties of which, requires judgment, intelligence, and learning.

Before this controversy arose, he was selected with Cleveland to take charge of the property now in dispute, to sell portions of it, to make wharves, erect buildings, and to manage and control it every respect for the advantage and benefit of the owners. It also appears that he kept the books of this commission. Thompson's answer, it is seen, contradicts almost the entire narrative and statement of Collins as to the occurrences in Texas. This part of the bill, however, is sought to be sustained by the deposition of a Dr. Dasmiex, who is the brother-in-law of Collins. This witness had not been introduced to Thompson, until he was invited by Collins to go into the tavern, in Liberty, when the parties were engaged in executing the deeds and papers containing the contracts between Thompson and Collins, and he was then invited to be introduced to Thompson, as an old acquaintance and friend of Collins, complainant.

His becoming a witness to the deed seems to have been a mere incident occurring on the occasion of his introduction. On this introduction, according to the statement of the witness, Thompson repeated the substance of all the conversations he had held with Collins pending their negotiation, as is set out in the bill He says Thompson was cautious and reserved in conversation on this subject to all persons but Collins, Primrose, and himself. He does not state any reason or inducement Thompson had to repeat the long story of his grievances against Kennedy, nor how he ascertained that Thompson was reserved in conversation with all persons, with the exception stated, especially as it does not appear that he was in his company at any other time, but when the papers were executed. The statements of this witness are so identical with the allegations in the bill, that the conclusion cannot well be resisted, that he had seen them, and was not a little influenced by them. There was another witness to the execution of the papers. No reason is given why his deposition was not taken; and this goes far to impair the confidence that might otherwise be felt in the testimony of Dismieux. This witness states, among other things, that Thompson, in the interview spoken of, when the papers were executed, said, that whatever he might obtain from Kennedy, by compromise, he would pay over to the plaintiff. The parties seem to have been very particular in having all their contracts reduced to writing, and Collins to have been very guarded in protecting himself against all liability on the deeds and conveyances made to Thompson, and especially from any responsibility for costs in suits that might be brought in his name. In the deed referred to in Thompson's answer, as Exhibit

it is required of him (Thompson), that he should "pay all costs and charges, and expenses of every kind and description that may arise in any manner in regard to said lands, and that the said Sidney E. Collins, is not to be held liable in any way whatever, for any conveyances he has heretofore made for said lands, or for any power of attorney he, the said Sidney E. Collins, may have heretofore made to any person or persons whatsoever, to dispose of any lands in the U. S. of America, and it being expressly agreed that the said Sidney E. Collins, his heirs, &c., are not to be held liable to the said Drury Thompson, his heirs, &c., in any way for any papers that I, the said Sidney E. Collins, have heretofore made to any one in regard to said lands." Now, if there was any agreement or understanding, that Thompson was to pay to Collins, whatever he might obtain from Kennedy by compromise or otherwise, it is unaccountable why that was not inserted in the deed just referred to. There is no statement in the bill in relation to this deed. It is in no manner referred to, though it was certainly of more value and importance to Collins, than any other paper made by the parties, and if his object was, as it was certainly his duty to give a faithful narrative and history of the case, he should have set it out, or referred to it in the bill. The deposition of this witness does not, in my opinion, discredit or impair the force of Thompson's answer, and it will therefore be regarded as giving a true and faithful account of the occurrences in Texas, during his visit there in company with Primrose. On Thompson's return to Mobile, and pending his negotiations *negotiations* with Judge Campbell for bringing the suit, at the instance of the Judge, all his contracts with Collins in Texas were relinquished, without hesitation, as will hereafter be shown. From this time it was to be regarded as Collins's suit, and he was to have a substantial interest in the recovery, if any should be had. This goes far to show that Thompson is not liable to the imputations cast upon him in the bill, and that in truth he dealt with Collins, as the deeds and papers between them indicate. I am of opinion that he practised no fraud on Collins, and that he willingly and understandingly entered into the contracts made between them in Texas. In January, 1845, it was understood that the Kennedys were about sending an agent to see Collins, and to effect with him a settlement or compromise of the suit that had been commenced. Thompson again visited complainant, in anticipation of the visit of this agent, to put Collins on his guard, and to prevent any arrangement with him. The bill alleges that, on this occasion, Thompson stated *he had but little* confidence in the suit he had brought, but that the Kennedys were badly frightened, and would probably send some one to see him on the subject, and that he then also stated, that if anything should be recovered, the shares of complainant's deceased brothers, George and Joseph, would vest in the mother of the heirs, and that this mis-statement of the law was made to induce complainant to believe that his interest was but $\frac{1}{8}$, even if any recovery be had.

Now, the professed object of Thompson, in this visit, was to prevent any compromise with the agent of the Kennedys, and he would certainly do nothing which would more effectually defeat his purpose, than to destroy in Collins, by depreciating the value and amount of interest he would have in its recovery, confidence in the suit. This statement in the bill is, therefore, incredible, especially when it is seen that Thompson's interview with the complainant on this occasion determined him to reject all overtures and propositions to settle the controversy with the heirs of Kennedy. The suit was pending in this Court three years, from April, 1844, to April, 1847, and from the time it was at issue till the final decree, Thompson regularly attended every term of the Court. He was closely attentive to the examination of the witnesses, and took all the interest in the cause which its importance was calculated to excite. He was as thoroughly acquainted with it and with everything pertaining to it, as Thompson, or Primrose, or any of the parties concerned. The value of the property, pending and at the trial of the suit was fully known to him, for the charges in the bill were mainly founded on the low price at which it was sold by him and his brother to Kennedy. Hence it was an important point at the trial, to have it estimated at its highest value, and several witnesses, together with the books of the City Assessor, were examined for the plaintiff on that point. Whenever the plaintiff came to Mobile, he lived with Thompson at his house, free of charge, and when Thompson was not keeping house, he paid his board. He also furnished him means to travel to and from Mobile, as often as the case required his attention at the latter place. He said he was without funds, and I think this was probably true. In one of his letters to Thompson he says, the amount so advanced was about $1000. This conduct of Thompson is brought up in the bill as affording evidence of a design to defraud him of his property and his rights. Why this was resorted to, as a means to that end, no explanation is given or attempted. Thompson was doubtless prompted mainly in thus affording him the means of attending the sessions of the Court, by the desire of Judge Campbell, that he should participate in the management of the case, to prevent the impression, that it was a suit got up for speculation, which could not fail to diminish the prospect of success. But Thompson cautioned him not to indulge too freely in conversation with Primrose. Those who know the communicative disposition and propensities of this individual will concur in the opinion, that this was very good advice.

These cautions not to converse too freely with persons about the suit, which the bill alleges as matters of grave complaint, certainly could have been intended for no other purpose than to guard against any prejudice or injury which such a course might produce.

After a protracted litigation in this Court of three years, a decree was rendered for complainant, when the case was removed to the Supreme Court by appeal. Now it is apparent, that in this long period, during which Collins spent much of his time at Mobile, he

must have been thoroughly convinced of the frauds which he alleges Thompson practised on him in Texas, when the first contracts were made, and also on his visit in anticipation of that of the agent of the Kennedys, and yet, on the 13th January, 1849, he conveyed to Thompson voluntarily, and at his own instance, one-half his entire interest in the property recovered, see Exhibit E, to Thompson's answer. This, it seems to me, independently of Thompson's answer, affords strong, if not conclusive proof, that the frauds imputed to him are altogether unfounded.

We come now to the meeting and interview of the parties, including Primrose, at the office of Messrs. Campbell and Chandler.

It was the occurrences at this interview, as stated and set forth in the bill, and the deeds executed as the result of it, which undoubtedly gave rise to this controversy. The bill in relation to this subject has already been set out. The answers and the evidence will now be given.

We begin with the statement of Judge Campbell, which is appended to the answer of James Campbell. "In the month of February, 1851," says the Judge, "Collins arrived, as was expected to arrive, in Mobile. My impression is that, before his arrival, Wm. F. Cleveland informed me of the fact, and requested me to appoint an evening of the week following, when all the parties in interest in the decree could come to my office and have a conference on the subject of the suit and their interests. He probably mentioned there had been some altercations between some of the Mobile parties, or I may have learned of these otherwise, and have blended that knowledge with this conversation. It may be, however, that this conversation arose after the arrival of Collins.

"Thompson had informed me at an early stage of the suit that Campbell and Cleveland were in some manner interested in his title, and had furnished him with the sum paid to me. They had never interfered in the management of the suit, nor can I call to mind any conversation upon it, while it was in the course of preparation, with them. They had never asserted to me any particular or special interest; they had never solicited of me any favor in the arrangement of the suit, or any settlement concerning the suit; they had never disparaged the claims of either of the parties, or exalted their own pretensions.

"There was no consultation in reference to what should take place at the conference that one of them asked for; there was no combination nor concert to co-operate there; no distribution of parts, nor preparation of any character or kind for the meeting. They did not know what I should say, nor did I know what they, or any one else, would propose. The whole significance and import of all that ever took place between these gentlemen (or rather Cleveland) and myself was, that those persons who claimed to have any interest in the suit I was conducting should meet at my office to converse of the suit, and their rights and interests in that suit, and I appointed the

meeting without a second thought about it. It is stated in the bill of this person in the Circuit Court of the U. S. at Mobile (Collins), that the interview took place the day of his arrival at Mobile, and that I communicated the facts to him. I do not recollect this to have been the case. If the meeting was appointed before his arrival, his arrival was delayed, if the fact is as stated. I was a party to no scheme to surprise him, and he could not have been surprised in the regular course of any arrangements made with me. It was a matter of entire unconcern to me whether the meeting took place at one time or another, and I have no recollection of having taken any share in convening the parties. The whole matter was a courteous compliance with a request to which no suspicion or mistrust attached.

"The parties all came to my office about the same time, and a winter's evening was spent in their affairs. In the course of it, there was conversation about the suit, its condition and future course; the items of expense that had been incurred were spoken of; Cleveland mentioned with an approach to exactness the money paid out by Cleveland and Campbell, a sum between $2000 and $3000; Thompson did the same (I think), but the sum I do not remember, but the whole expenses were not more than $3000 or $4000. I recollect nothing of exaggeration, or that looked as if they desired to impose on myself or Collins, for I knew but little of the expenses, save those incurred in my favor, nor have I ever seen the accounts of expenses, and my impressions are derived principally from what I heard then. Attention was called to the interest that the parties had in the suit, perhaps by myself.

"After some conversation, a reference to me was made for a *suggestion*, and a willingness to abide by my opinion expressed. My reply to what seemed the general wish was that the property might be divided into six parts, and to assign two to Collins, and one to each of the others. Primrose expressed in strong terms his dissent. He said he was not satisfied; that the share of Collins was too large; that his title was a mere nothing; that the success of the suit was owing to the superior ability with which it had been conducted; that it never would have been brought but for him; that I had refused to take it; that he had thought of it for years before it was commenced, and could get no one to take it; that Collins did not expect such a share; that he had said all he wanted was some negroes and cattle, and he would be satisfied; that he was willing to do more, but was not willing to do what I had proposed. He said more of the same kind, all of which was directed against the superior claims of Collins, and nothing was said by him as to the others, except that, in the course of the evening, he said he wished his share conveyed to Campbell and Cleveland. As these were the opinions the others might hold, I reminded them that the suit was founded on the title of Collins; that without it there could have been no recovery; that I had prosecuted it as a good title, and my feelings of interest in

the suit depended on that fact, and that Primrose had no right to depreciate it. I asked what they considered the property to be worth. Thompson replied $200,000. I said that when the suit was brought, none rated it over 80 or 100 thousand dollars; that every one of them would get under my proposal more than any of them had anticipated; that they agreed that the services of our firm had exceeded all others in importance, and yet the smallest share was greatly above our compensation. James Campbell expressed satisfaction. Cleveland agreed. Thompson and Collins spoke in general terms. Thompson said he had always said he would deal fairly with all, and he was now ready to do so. Collins said he was willing to any fair division. The parties left my office in apparent good temper, and with a disposition to meet on such basis as I had suggested, but without having come to any definite agreement. I told them when they left to consider of the matter, and if I could be of service to come to my office. The suggestion I made was designed for consideration, and was not presented in any absolute or authoritative way. It was framed upon the conversations between Collins and Thompson, and a general knowledge of the obligations Thompson had entered into. Collins had volunteered to share with Thompson, and had drawn writings to that effect, and the only inquiry was to harmonize the other engagements with that agreement. I suppose that Collins was aware of those agreements, if not their particular terms, at least their general effect. I did not suppose there was any conflict between Thompson and Collins.

"They were agreed, and Thompson's share was reduced in double the proportion of Collins under this suggestion. I suppose the relations between Collins and Thompson to be cordial and intimate.

"I have placed in this statement all that amounts to anything like mistrust that I ever heard of from Collins, and I know that the relations between Thompson and some of the others were not friendly.

"Collins was at the time an inmate of Thompson's family. I had no interest, present or future, real or contingent in the result of their deliberations, and my personal relations with neither one of the parties was of such character as to sway me in the least."

In another part of Judge Campbell's statement, he says:—

"I prepared no agreement the evening in question. Some short time after (one, two, or three days or more), I received a message from Mr. Chandler, from some one or all of these persons, to draw up an agreement. During the morning that I received it, I prepared a rough draft, and gave it to James H. Campbell, to make out three copies. James H. Campbell was then a student in my office. The share of Primrose was included in that of Campbell and Cleveland by the directions I received. These copies I learn were executed. I was not present at the execution, nor did I have any other conversation with these persons or any of them about the matter, during my continuance at the bar."

"None of the parties to the existing suit, during that time, ever

discussed the agreement, obtained explanations, or gave explanations of it, nor indicated discontent, nor regret with any of its terms, nor intimated that I was in any degree responsible for its adoption, or that it was other than a judicious arrangement."

The answer of Thompson in relation to the meeting at the office of Messrs. Campbell and Chandler is as follows:—

"The story of the complainant in reference to the visit to Mr. Campbell's office, and what was there done, is a tissue of falsehood; the facts are these: One or two days after the complainant's arrival in Mobile, he informed respondent that he wished respondent to go with him to Mr. Campbell's office that evening; that he had made an appointment with Mr. Campbell to meet respondent, and the others interested; that they might come to some agreement, adjust their interests; that although respondent had not been as full and explicit to him on the subject as he might have been, still he had been aware that the others were interested with respondent, and that Mr. John A. Campbell had long before informed him on the subject; that he had not known the extent of respondent's understanding with the others, but he had always left the matter in respondent's hands, and was satisfied with what respondent had done, and was willing to abide by it, and share as a brother with respondent, after adjusting and satisfying all expenses, advances and undertakings and arrangements about the suit. This was the first and only intimation of any contemplated meeting of the kind—it was before dinner. The matter formed the subject of constant conversation between complainant and respondent up to the meeting—they fully and freely talking the whole of it over, and respondent explained to him his (respondent's) position towards, and understanding with the others. Respondent explained to him that Primrose had looked up, and attended to taking the evidence, that Cleveland knew much about the property, and that his information and aid in that regard had been of service. That the prospect was, more money was needed in carrying on the suit than respondent, Cleveland and Primrose could easily advance; and that James Campbell had advanced, and had somewhat aided in the suit; that it became necessary to interest Mr. James Campbell, or some one else who would advance the money. At the appointed hour after tea, Collins and respondent went to the office of Mr. John A. Campbell and there met Cleveland, Primrose, and James Campbell. The matter was talked over at length, and some one of the parties (not respondent) referred to Mr. John A. Campbell for his opinion as to how the settlement should be made. Respondent said, in adjusting the matter, he wanted Mr. Collins to be dealt liberally by, as he had always intended he should be; and also, that the parties should be satisfied, to agree and settle among themselves, and that he would be satisfied, be his portion what it might. It was proposed by one of the parties (he thinks it was by James Campbell) to leave the matter to Mr. John A. Campbell, which was assented to by all. Mr. John A. Campbell stated, that he had never seen the

written agreements between respondent, Cleveland, Primrose and Campbell, but had known that they were interested in the matter, and supposed that each had rendered services, or had been of service in advancing the money, &c., and suggested a division of one-third or two-sixths to Mr. Collins, and one-sixth to each of the others.

"Mr. Primrose stated, that he thought he should have as much as any one, as he had done more in the matter than any one. To which Mr. John A. Campbell replied, that the original right to sue for the property was in Collins; that was a higher claim, and should entitle him to a larger share. Each and all of the parties appeared satisfied, and so expressed themselves.

"Respondent says, that before leaving the office of John A. Campbell, some one of the parties, he does not remember who, said something about drawing the papers. Mr. Campbell told us to go and reflect on the matter, and when we had concluded what to do, to come and he would have the necessary papers drawn. They soon after left John A. Campbell's office—Mr. Collins and respondent walking together. After they had passed down the steps, at which time complainant stated to him that he could have wished that a larger share should have been allowed to respondent.

"Respondent told him that he was satisfied, and had not a word to say, although he thought that he should have had a larger share; to which complainant replied, that it will make but little difference, as the one-third allotted to him and one-sixth to respondent added together, he would divide with respondent, and that it would be more than enough for both of them. The parties went to an oyster-house and took supper together, talked the matter over fully and freely; all appeared satisfied, and so expressed themselves. The subject of holding the property together, and building it up together to a better advantage and uniformity was suggested and discussed.

"After the party had broken up, and the next morning, complainant expressed pleasure and satisfaction at the proposed settlement and adjustment of the matter; spoke in high terms of Mr. John A. Campbell, and of his sense of justice. In a few days the parties met at the office of Primrose, when were produced two or three deeds in the handwriting of Mr. James H. Campbell, then a student-of-law, in the office of Messrs. Campbell and Chandler.

"Another copy was made by respondent, and at Primrose's suggestion, respondent added an undertaking by Collins to procure his wife's relinquishment of dower, and they were executed. The pretences and statements in the bill in opposition to the foregoing narrative in this answer respecting the interview in Mr. Campbell's office, or preceding and introductory to it, or respecting and drawing of the papers, are false and without the semblance of truth. There may have been some conservation respecting the lines, the accounts, and what remained to be done in the case; the interview was a long one; it consumed a winter's evening. It was full, free, and open, without misrepresentation and without suppression of anything. The

pretences by complainant that he was surprised at the interest of the parties, or expressed any surprise, is false. He knew it all before, and went there expressly to adjust them. There was no paper drawn that night, and no instructions given to draw any. Complainant had ample time for reflection; had ample time for consultation with any counsel he might desire. Was as fully informed of the decision of the Supreme Court as respondent. He had full information of the value of the property, and during the progress of the case examined the tax assessor's books, and seen it assessed at several hundred thousand dollars. At the very interview in Mr. Campbell's office, it was spoken of as being worth at least $200,000. Complainant knew the value of what he was called in good faith to convey. Instead of being bound to yield to Mr. Campbell's suggestion, or surprised at the number of claimants. Complainant was rejoiced at the liberality which suggested one-third as his portion. Primrose took no deed, but took an agreement from defendants, Cleveland, Campbell, and respondent, to secure his sixth. Why he preferred this, respondent does not know, but supposes it was done to prevent his creditors reaching it. Primrose suggested, that the deeds be not recorded, and respondent knowing that registration gave his deed no further validity, and that he was with his co-proprietors in possession of the property, did not record it."

In relation to the meeting and occurrences at Judge Campbell's office, the defendant, Cleveland, states in his answers as follows: "After the decree in the Supreme Court, and before complainant arrived, in Mobile. Mr. James Campbell and respondent, had expressed a desire to Thompson and Primrose, to have the rights of all parties defined and settled, and felt anxious to have this done. Respondent heard that complainant was coming to Mobile, or that he had just arrived, which, respondent does not remember, and he requested Mr. John A. Campbell to appoint a time when all parties could meet him, talk the matter over, and adjust their rights. Mr. Campbell suggested some evening a few days from that time. This was the first conversation respondent remembers to have had with Mr. John A. Campbell on the subject of the suit, or the matters embraced in it, and it was a simple request for him to appoint a time where the parties might meet, and adjust their rights, and his simple reply was, the designation of an evening. Without further interview or communication with Mr. John A. Campbell, so far as respondent knows or believes, the parties met at his office at the appointed time. Respondent and James Campbell came together, and preceded the others by a few minutes; then Primrose came, then complainant and Thompson. Nothing was said pertaining to the matter until all arrived, when the subject of the visit was stated by some one of the parties, and the matter was talked over. Each party mentioned with an approximation to exactness, his outlays and expenses. Some one of the parties, James Campbell, respondent thinks, proposed to refer it to Mr. John A. Campbell, to which

all assented, and readily, as respondent is advised and believes. Mr. Campbell stated generally that he supposed each had rendered valuable services, and spent money in the case, and suggested that complainant's rights should be one-third, and each of the others one-sixth. With these suggestions, all expressed satisfaction except Primrose, who objected to the allowing of one-third to the complainant. Stated his own services and labors in the case, representing that the matters had been chiefly done by others than the complainant, that he had originally expressed contentment with but little. Mr. John A. Campbell repelled this idea, and said, that although the others had been chiefly instrumental in carrying the case through, the title was in Collins, and he ought to have the largest share.

"Mr. Campbell requested the parties to consider of what had been said, and if he could aid them, to call on him. The parties left his office, went to an oyster-house, and took an oyster supper, and talked the matter over, and consulted as to the course to be pursued in reference to the property. Complainant seemed particularly pleased at Mr. Campbell's having suggested so large a share for him.

"It is untrue, that the interview in Mr. Campbell's office in February, 1851, was the first intimation complainant heard, that respondent, James Campbell, and Primrose claimed an interest in the matter.

"Respondent is advised and believes that he knew others were interested with Thompson from the beginning. That *as*, before 1849, he knew who were interested, and that Mr. John A. Campbell stated to him in 1849, that others were interested, and his reply admitted his previous knowledge of the facts, and respondent is satisfied, that complainant well knew *knew* the parties interested with Thompson, at least as early as his first visit to Mobile. It is entirely untrue, that Mr. Campbell proceeded to draw any instrument in writing to carry out his recommendation, or proposed, or was requested to draw any. The deed, which is appended to the bill as Exhibit A, and which was the first and only paper respondent knows anything of, resulting from, or growing out of the interview at Mr. Campbell's office, was produced at the office of William D. Primrose, and executed several days, and respondent thinks a week or more after the interview at Mr. Campbell's office. It was executed in triplicate, and bore its true date 15 February, 1851. Respondent thinks complainant himself produced the paper. Respondent is advised and believes that complainant came to Mr. Campbell's office, knowing the object of the meeting, and the parties he was to meet. He had full time for reflection, for consultation with whomsoever he might wish. He knew the decision of the Supreme Court; knew the facts of the case fully. Had paid particular attention to the value of the property, and in the preparation of the evidence. Had turned his attention especially to proving its value, and knew, perhaps, as well as any of the parties, the value of the property."

The answer of James Campbell in relation to the meeting, and of what took place there, is substantially the same with the answers of the other defendants. He states "that complainant neither expressed nor showed surprise at meeting any of the parties; that the allegations in the bill, of inducements and persuasions on the part of Mr. John C. Campbell, prior to respondent's suggestion, are wholly untrue; that the assertion in the bill, of a reply by complainant to that suggestion, to the effect that these respondents were wholly unknown to him, and that he knew nothing of the services rendered or money advanced, is wholly untrue. Such a reply was entirely uncalled for, and none such was made. The conversations occupied the greater portion of that evening. The parties left Mr. Campbell's office, and his parting words were, to consider of the whole matter, and, if he could be of any service, to call on him. That the allegations in the bill, that the deed was drawn and signed on the night of the meeting, and redrawn next morning, are wholly false. No papers were spoken of that evening, and none drawn or executed until Saturday, the 15th February, 1851, some days after the meeting at Mr. Campbell's office. On that day three papers were brought by complainant to Primrose's office, where the parties all were. These were in the handwriting of James H. Campbell, and were complete, even to the date, which was of that day. They were examined, and found to be in strict accordance with the terms suggested by Mr. John A. Campbell. The defendant further answers that the property in 1830, the date of the plaintiff's conveyance to Kennedy, and in 1844, the date of its commencement, were prominent subjects of inquiry in that suit. Many witnesses were examined on both these points. The city assessments for taxes from 1830 to 1845 were collected and compared, and the sales of adjacent property ascertained. The case of the plaintiff required the largest estimates, and proof of that kind was sought. The evidence was in part procured by the complainant, as this respondent is advised and believes, and was at the hearing of that cause in 1847 debated in the presence of complainant. That there was no great change in the value from 1844 to 1849. In 1849 there was a tendency to improvement, which slightly increased in 1850, more in the latter part of 1851, and greatly in 1852 and 1853, until the pestilence of that and the next year in the Southern cities, and the drought of 1854 and 1855, produced stagnation. Thompson, at the meeting in Campbell and Chandler's office, stated the property to be worth $200,000. This was double the value assigned to it for 1844, by the testimony of Sidney Smith and John Bloodgood in said cause, and $75,000 more than the city assessment of it in 1851."

Such are the answers of the defendants, including the statement of Judge Campbell, in relation to the occurrences at the office of Campbell & Chandler in February, 1851.

As to the knowledge which the complainant had of the parties being interested in the suit besides Thompson, it will be recollected that Judge Campbell, long before this meeting, had informed him

that such was the case. In addition to this, Jacob Magee, a respectable citizen of Mobile, and a purchaser of the property recovered, in his deposition says: "I had repeated conversations with Collins touching the land recovered from Joshua Kennedy's heirs, during the pendency of the suit and since, and he has always stated that Campbell, Cleveland, and Thompson were interested in the property. After the suit was determined, he said he had conveyed to Campbell, Cleveland, and Thompson, but had not conveyed to Primrose, who also had an interest. I never heard Collins say anything against the interest of Campbell, Cleveland, and Thompson until about the time or after the commencement of this suit, when he said he had been overreached; that they had got too much, and he would be able to prove it." The statement of Magee, together with that of Judge Campbell, taken in connection with Thompson's answer, in which he states that during the long conversation between himself and complainant on the day and during the afternoon on which the meeting was held at the office of Campbell and Chandler, he, the complainant, professed to know that all the persons who attended the meeting were interested in the property recovered, leave no doubt that the ignorance he professed to have of the subject is simulated, and that he knew perfectly well the object of the meeting, and the persons who were to attend it. His account, too, of the occurrences of the meeting is all a fiction, to answer the exigencies of his case, and to construct which required considerable ingenuity, by no means compatible with the ignorance he assumes in the bill. If he knew nothing of the alleged interest of the persons present—if he had no knowledge of any claim but that of Thompson—it does not seem reasonable that he, or indeed any one, would have concurred in, or submitted to, the views of Judge Campbell. But it turns out that he was really and in truth the only one well pleased and entirely satisfied with the division proposed by the Judge. Instead of being a complainer, he attempted to administer consolation to Thompson, on their way to the oyster house, by proposing that their shares should be put together and equally divided. This impulse of generosity at the moment was doubtless owing to the award to him of a much larger share than he anticipated, and, in my opinion (with deference to the judgment of Judge Campbell), more than he should have received. His claim consisted only in a title, which, at the commencement of the suit, was extremely doubtful. It had been rejected by the government while in the hands of his father or his representative, and was buried in the rubbish which Kennedy had heaped upon it, requiring a master hand for its removal. By his own statement, having sold it to Kennedy, he was reluctant to convey it to Thompson, and did so only on the condition that he was never to be subjected to the payment of costs, or to be held responsible for any deeds or conveyances he had made in relation to it. He was surprised and displeased that suit had been brought in his name, and there is little doubt that but for Thompson's second visit to Texas, in anticipation of the visit of the agent of the Kennedys, he

would have sold it for a small sum; and it is quite certain that but for the uncommon industry of Thompson and Primrose in hunting up evidence and tracing out the titles, it would have been permitted to remain part and parcel of the estate of Joshua Kennedy. I think, therefore, that an equal division with the others of the property recovered would have been quite as much as he was entitled to, or should have been awarded to him. The remarks or speech which he says Judge Campbell made at the meeting is a fiction. He made no such remarks. And it is equally untrue that the complainant expressed any surprise at meeting the other persons interested. His whole account of the occurrences of this meeting have no foundation in truth. The evening was spent in conversation in relation to what each had done in aiding to prosecute the suit, in the outlay of money which they had severally made, and in estimating the value of the land recovered, which Thompson fixed at $200,000. The truth is, when the meeting adjourned the complainant was in as full and perfect possession of everything in relation to the subject as any one of the others. Pending the suit he was a constant attendant at every term of the Court, as before remarked, was at the trial, heard the argument of counsel, and was as familiar with the evidence given, and particularly as to the value of the land, as any one of the parties concerned. There is no pretence, therefore, of ignorance in relation to the lands, or the suit, in any respect whatever. So anxious was the complainant to have the settlement suggested by Judge Campbell consummated, that he called twice for the deeds before he obtained them. Among the glaring misstatements in relation to the meeting at Judge Campbell's office is that wherein the bill alleges that on the day of complainant's arrival in Mobile from Texas he met Mr. Campbell, who requested him to come to his office that evening; and he accordingly went, in company with Drury Thompson, &c. The register of the steamboat in which he came from New Orleans shows that he arrived several days before. The defendants, in their answers, are positive on this subject, some being of opinion that his arrival was as much as a week before.

The deeds, in conformity to the agreement of the parties, were all executed on the 15th February, 1851.

At the meeting at the office of Judge Campbell, and at no other time or place, before the execution of these deeds, was there anything said about drawing other deeds in future. Thus, it is seen that the charge in the bill, "that at this meeting everything had been previously agreed on, the programme prepared, the parts assigned, the decision of the arbitrator known, and his influence relied on by the defendants to carry it into effect," is entirely groundless, having no other foundation than the malignant feelings of the complainant, and those connected with him in the concoction of the bill.

After this various meetings were held, at which the property recovered was the principal topic of discussion; what improvements

were to be made, the filling up of low and submerged lands, repairing wharves, &c., occupied their attention at these meetings, and were mainly the subjects of consultation. On the 16th July, 1851, complainant, before leaving for Texas, constituted Cleveland and James Campbell his agents, as shown by his power of attorney of that date (see Exhibit E to the bill). After his return from Texas, the parties, upon consultation, appointed the complainant to take charge of, improve, sell, or dispose of the property, as they might think most advantageous for all concerned, and also to borrow money.

This authority was duly accepted by said agents, and they acted under it, until the complainant determined to claim the whole, and bring this suit. They rented an office, and purchased the necessary books, of which complainant was bookkeeper. They borrowed the sum of $10,000 from Wm. Jones, Jr. They sold lots and parcels of the land to various persons, to the amount of about $85,000 (eighty-five thousand dollars). Previous to these sales, James Campbell had advanced considerable sums for the improvement of the property. They erected large and costly buildings, and, indeed, did everything which their judgment suggested for the interest and benefit of the owners. About the 1st of April, 1852, the sum of $5,000 was divided among the parties in interest. The power of attorney under which Collins and Cleveland acted, is not mentioned or referred to in the bill.

Cleveland charges in his answer, that the power of attorney was among the papers of the agency, and has been retained by the complainant, with the books and papers, and respondent believes he still has it. From the date of the deed of February, 1851, to the last of the year 1853, a period of nearly three years, all the parties acted in harmony together, as the joint owners of the property. Up to this time, no complaint had been made of any of the frauds and impositions set forth in the bill, though, if they ever existed, he had long before full knowledge of them, and none whatever of the impositions alleged to have been practised on him at the office of Judge Campbell.

From the latter part of the year 1853 to the present time, the most intimate relations have been maintained between the complainant and Primrose, who, for anything appearing on the record, is equally interested with the defendants in the property sued for, and who, from portions of the evidence, is altogether willing, if not anxious, that a recovery should be had.

If he was omitted to be made a defendant in the bill from any cause whatever, he should have asked leave to be permitted to come in, and make common cause with the others in defence of their common rights. The bill states, as has been seen, that Cleveland and Thompson made sundry attempts to obtain from complainant, by threats, a new deed for the property recovered, and by exciting his fears of other suits that might be successfully brought for it.

These defendants deny, in the most positive manner, all the charges on this subject. They say, they never wanted or asked for any other deeds than those they had already, and that the story about other suits, escheats, &c., was never thought of by them, and were the inventions of Primrose. If the defendants were not satisfied on this subject; if they doubted the validity of the deeds they held, they certainly would have sought the advice of Judge Campbell or Mr. Chandler, or some other professional gentleman. Yet, we do not hear of their doing anything of the kind. Primrose says, he did speak of these things to Cleveland and Thompson, but not to Collins. He stated, he wanted another deed for certain reasons which he states; and it is quite probable that he sought to obtain it by alarming the fears of complainant of outstanding claims, titles, &c.

This person occupies a position as a witness in this case, which goes far to weaken the confidence that might otherwise be felt in his testimony. He has, by his own confession, supplied many of the materials for framing the bill, as well in writing as verbally. He has received one thousand dollars from the complainant gratuitously, which looks very much like bribery and subornation; was on the most intimate terms with him while the suit was in contemplation, and has the promise that his interest in the property shall not be injured or impaired, whatever may be the result. He has certainly misstated some of the occurrences of the meeting held at the office of Judge Campbell, and it is obvious that the complainant's hopes of success rested upon his being able to establish the statements of the bill of what took place at the meeting. It is highly probable, also, that he relied on Primrose for that purpose, as he is the only witness examined on that subject. The bill states, that after his (complainant's) suspicions were aroused that frauds had been perpetrated against him, he applied for legal advice to D. Chandler, Esq., and stated to him that he had been overreached in the deed of 1851, and that he might be obliged to question its validity as soon as the property could be released from its incumbrances, and stated that he did not wish to do anything that could be considered as in anywise ratifying that instrument. That Mr. Chandler advised him to notify the tenants that he claimed the whole property, but was allowing Cleveland to have a part of the rent in compensation for his services. That it was in consequence of this advice, that complainant consented to lease any part of the property in the name of Collins and Cleveland. That he had considered he had employed Mr. Chandler, or the firm of Chandler, Smith & Herndon, as his counsel. That he frequently consulted with him on the subject, until the summer of 1854, when he was informed that the said was retained by Campbell and Cleveland.

This whole statement is denied by Mr. Chandler, who says, in his deposition, that when he was applied to, long after this, he positively refused to be employed, as did also Mr. Smith (see their depositions).

The 25th charge in the bill is, that since 1851 various attempts have been made on the part of the defendants, by means of misrepresentations, undue influence, and threats, to induce complainant to make to Thompson, Cleveland, and Campbell, a new deed, which should operate as a conveyance, or as a confirmation of that of Feb'y, 1851, and thereby to assure to them a title to two-thirds of the estate recovered by him in said suit, *and particularly to sign a paper prepared by their attorney, a copy of which is hereto annexed, marked Exhibit H.* This paper, as it will show, is a deed prepared to be signed by the defendants as an indemnity to Collins for the conveyances he had made to the several lots which had been sold, to the extent of their interest in said lots, against any suits or recovery that might thereafter be brought or had for the said land against Collins.

He caused this deed to be drawn himself, for his own security and protection, to be signed by the other parties, without their knowledge or consent, and without consulting them in any manner whatever (see deposition of young Campbell, and answers of defendants). It was, doubtless, intended by Collins to meet and prepare against any suits or claims about which the alarm had been given by Primrose. That he should offer this paper as evidence, that the defendants wished to obtain from him a confirmation of the deed of 1851, shows the recklessness and utter disregard for truth and accuracy which pervades the entire bill. It should have been before stated, that in 1851 Collins, Primrose, and the defendants, entered into a contract to hunt out and discover other lands belonging to the elder Collins in his lifetime, and for that purpose Collins and Primrose travelled through Pennsylvania and the Western States, during the summer of that year. They examined the records of several of these States for evidences of title.

It is worthy of notice, that the parties to this contract agree to divide whatever lands they might recover, precisely upon the terms agreed on for a division of the property in this controversy. They adopted it as a just and equitable mode of division, and this proves how well Collins was satisfied with that division (see Primrose's deposition.) It should have been also stated, that Collins's letters to Thompson and Primrose prove that at an early period he knew that the latter was interested in the property recovered of the Kennedys. This concludes my examination of the points involved in the merits of this controversy. The bill and the answers are unusually voluminous, and it is not deemed necessary to examine all the matters they contain, as this is not required to reach a proper and intelligent conclusion.

The result then is:

1. That the deeds made in Texas, on the visit of Thompson and Primrose, were executed without fraud and misrepresentation, and with full knowledge of their contents, import, and objects.

2. That the second visit of Thompson to the complainant was

made in anticipation of that of the agent of the Kennedys, for the purpose of putting him on his guard; and to this end, he informed him of the value of the property, and the prospects of recovery.

3. That the deed of 1849 was made by complainant to Thompson voluntarily and upon his own suggestion, and that the inducements to making it are not truly stated in the bill.

4. That Thompson, upon the requisition of Judge Campbell, without objection, agreed to set aside the contracts made in Texas, and did so set them aside, and consented, as did the other parties, that the complainant should have a substantial interest in the recovery.

5. That Judge Campbell wished him to have an active agency in the preparation of the cause for trial, and also that he should attend, which he did.

6. That Thompson furnished him with the means of travelling, boarded him at his own house, and paid his board when he did not keep house.

7. That at the trial, the value of the land was proven, and it was the purpose of the plaintiff, and those interested with him, to have placed on it the highest estimate.

8. That before the meeting held at the office of Judge Campbell, he was duly informed of all the persons interested, and therefore expected to meet them at that time and place.

9. That he evinced satisfaction, and was well pleased with the views of Judge Campbell as to the distributive shares of the parties in the property recovered, and obtained from his office, some days afterwards, the deed which had been directed to be drawn up.

10. That he gave confirmation to those deeds by appointing Campbell and Cleveland his agents, while absent in Texas, by receiving, with Cleveland a written power of attorney to act for and on behalf of the others interested, and by acting under that authority for the space of two years.

11. That during all this time he made no complaint of being overreached or defrauded in any manner whatever, nor did he express any dissatisfaction at the share in the property assigned to him.

12. He has suppressed deeds and instruments which it was his duty to set forth in the bill. He has bought up and bribed one of the owners of the property to give evidence in his behalf, and to make with him common cause against the others. And finally he does not present himself with the clean hands and guiltless conscience which can alone insure a favorable reception in a Court of Chancery.

It is now proper that I should notice charges and accusations in the bill against Judge Campbell. The first complaint is in relation to alley-ways on two sides of a lot within the boundaries of the land recovered, which had been sold by Kennedy to the defendants Campbell and Cleveland. The title of these persons to this lot was confirmed by the decree in lieu of it, its value in money was directed to be paid in money by the Kennedys. Campbell and Cleveland had conveyed it to the State Bank who sold it at auction, at which

sale the Judge, with Moses Waring and Mr. Wiswold became the purchasers. Campbell and Cleveland had erected a commodious and valuable brick building on the lot, which was planned in its construction with reference to these alley-ways, and which had been opened and appropriated by Kennedy to the uses of this building and others to be erected in future. The proof conclusively shows that these alley-ways were included in the purchase of the lot from Kennedy, and were to be conveyed in the deed, and was omitted in the hurry of its execution. Judge Campbell insisted that these alleys should remain as originally designed, and was supported in this by Campbell and Cleveland, two of the parties interested in the property recovered.

But this claim to the alleys had nothing whatever to do with the suit or the final decree, nor did it interpose the slightest impediment to that decree as alleged in the bill. This subject is made a matter of grave and serious complaint in the narrative part of the bill, and it is also set forth as a distinct grievance in the 21 charge. Now, why this subject was but in the bill at all I am at a loss to determine. Since Judge Campbell is not made a party, and no decree prayed in relation to it, unless it was to gratify the malignant feelings of the complainant and those connected with him in the institution and prosecution of this suit. But this is among the mildest of the charges against Judge Campbell.

1. He is charged with having aided the defendants with Primrose in effecting their fraudulent contracts with complainant in Texas in 1844.

2. That the suit commenced in his name in this Court, was fraudulently kept concealed from him, and that he was kept in ignorance of the materal facts in relation to it by the advice of Judge Campbell, especially of the nature of the land sued for.

3. That he sacrificed the interests of complainant to the avarice of the defendants, and secured to them two-thirds of the property recovered.

4. That the meeting at the office of Campbell and Chandler in February, 1851, had been previously agreed on by and among the defendants, the programme prepared, the parts assigned, the decision of the arbitrator known, and his influence relied on by the defendants to carry it into effect.

5. That the statements made at this meeting by John A. Campbell, were intended to deceive complainant, and unduly influence him into a submission which should never have been made, and which as his counsel he should never have advised.

6. That the statements of John A. Campbell on this occasion as to the large advances and valuable services of the defendants in the case were untrue.

7. That in this transaction, John A. Campbell, whose duty it was to advise complainant, and on whom he relied for protection, advised

and acted for defendants alone, and in opposition to his rights and interests.

These are the principal charges against Judge Campbell, but there are others dispersed through the bill not so broad and malignant, but all tending to charge him with the fraudulent design of securing a large share of the property recovered to the defendants.

From January, 1851, to July, 1854, and even since that period, he seems to have entertained none other towards Judge Campbell, than sentiments of friendship, esteem and gratitude. On the 6 July, 1854, he made by letter a corrupt proposition to him to obtain from the defendants the relinquishment of a large portion of their share of the property recovered from the Kennedys. This proposition was received with the contempt it merited. The complainant seems to be under the impression that bribery is a lawful means of accomplishing his purposes, and his success with Primrose seems to have inspired him with renewed confidence in this mode of securing his objects. Some time after this period his ill feelings towards Judge Campbell had their commencement, which gradually matured until the bill was prepared and filed in November, 1855, wherein they are displayed with all the malevolence of conscious injury. During the interval between July, 1854, and November, 1855, it was rumored that the complainant betrayed indications of insanity, and one of his letters to Judge Campbell, marked as Exhibit B, in his statement appended to the answer of James Campbell, would seem to show there was some foundation for the rumor. At any rate, it is to be hoped that this was the case, for a partial and temporary aberration of mind should be greatly preferred to that state of feeling which could dictate the foul and malignant charges in the bill against Judge Campbell. When the bill was in preparation he was upon terms of the closest intimacy with Primrose, and when it is remembered that this individual was greatly dissatisfied with the recommendation of the Judge as to the division of the land, it would not be rash to say that he contributed to instil into the mind of the complainant the deep rooted dislike and malevolence expressed in the bill against him, and this impression derives confirmation from the fact, that during this period he was furnishing material for the bill. But I think the course pursued by the solicitor who framed the bill is not the one that should have been adopted. The feelings of repugnance to assail the character of members of the legal profession in the form of judicial proceedings, is a conspicuous trait among the members of the bar of this country, and it is honorable as it is conspicuous. Whatever may be the vulgar prejudice on this subject, there is no class of our citizens more strongly and particularly governed by the rules of honesty, fair dealing and high toned sentiments of honor. When a member of the bar is therefore importuned to asperse the character of a brother member in the form of a bill in Chancery, or any other legal proceeding, he should hesitate until he is somewhat satisfied of the truth of the proposed imputations. But surely, when he is desired to insert in a

bill charges of a most disgraceful character against an old member of the profession who has always been as much distinguished for honesty, probity and fair dealing in private life, as for great professional attainments, which have placed him on the bench of the highest Court in this country, he should have rejected the proposition unless made satisfied by proof of the probable truth of such charges. Instead of this however, he has inserted them with apparent gratification, and as far as the Court can perceive, without the slightest proof in their support.

If in the first instance he was induced to make the charges in the bill on the false statements of the complainant and others, who were urging him to bring the suit, the evidence closed time enough before the cause was taken up for trial for him to have been convinced of their utter falsity; and if he had then proposed to amend the bill by striking out these obnoxious charges, his conduct would have shown that he had no wish or design to asperse the character of Judge Campbell.

But instead of this he waits until he came to reply to the opening arguments, and then somewhat grudgingly acknowledged his disbelief in the charges against the judge. John T. Taylor, Esq., who was his associate in the prosecution of the suit, but whose name does not appear to the bill, as soon as he became impressed with the false character of these charges honorably disclaimed any participation in framing them, withdrew from the case, and returned the fee he had received from the complainant. These disclaimers were due to these gentlemen themselves as well as to the judge, though they were in nowise necessary to his triumphant vindication, for the proofs in his favor are full, complete, and without contradiction. This I am persuaded is one of the most remarkable cases ever brought before a Court of Chancery. The bill without the exhibits occupies over twenty-six large octavo printed pages, and the specific charges, mostly of fraud against the judge in connection with the defendants, are thirty-four in number. The gravest of these charges are claimed to be within the personal knowledge of the complainant, and yet no evidence has been produced in their support, and not the semblance of evidence against Judge Campbell. But, on the contrary, all the evidence in the case in relation to his connection with it shows that his entire course has been marked by the utmost candor, liberality, and a high sense of justice.

He required that Collins should have an interest in the suit, and should be the real plaintiff, and to this end would not proceed with the cause until Thompson agreed to relinquish the contracts made in Texas. He desired that Collins should come to Mobile and give his personal attention to the suit, which he did, and was at every session of the Court till the trial. He went to Washington and argued the case there without compensation, stipulating only that the fee promised to Mr. Sergeant should be paid. After it was affirmed in the Supreme Court the parties offered him a large fee to

bring suit for the rents and profits, which he refused on the ground that they were exaggerated. He was opposed to inflict any further embarrassment or loss on the Kennedy family, and he finally induced them to settle the matter on equitable and reasonable terms without further litigation. These are instances of unselfishness and professional liberality, which cannot fail to secure the approbation and esteem of all just minded men. When all litigation was ended the parties met at his office to consult as to a division of the property, and then he stood forth as the friend of Collins, and by his counsel, and the influence of his opinions, secured to him a larger share than he expected, or the other parties concerned anticipated. Thus it is seen that the complainant is indebted to Judge Campbell for the fortune he has acquired, and he seeks to reward him by the malignant slanders contained in the bill. If he is not wholly destitute of the feelings of gratitude which such acts never fail to inspire, if he should ever divest himself of the prejudice which has blinded him, and poisoned his mind against Judge Campbell, he will be made sensible that he has performed the part of the fabled serpent, which stung the bosom that warmed him into life.

The following decree will be entered: This cause coming on to be heard on the bill, answers, exhibits, and depositions, and the same being fully examined and understood, and the argument of counsel being heard: It is ordered and decreed that the bill be dismissed, and that the complainant pay the costs of this suit.

JOHN GAYLE, *Presiding Judge.*

And afterwards, to wit, on the twenty-second day of June, A. D. 1857 (being a day after the adjournment final of the term of the Court last mentioned), came the said complainant, Sidney E. Collins, and filed his petition, etc., praying an appeal from the final decree in said cause to the Supreme Court of the United States, to wit:—

Petition for an Appeal.

To the Supreme Court of the United States—

The petition of Sidney E. Collins, of San Antonio, in the State of Texas, respectfully represents that a decree was lately made in the Circuit Court of the United States for the Fifth Judicial Circuit, and Southern District of Alabama, bearing date the 6th day of May, 1857, in a certain cause therein depending in equity, wherein your petitioner was complainant, and Drury Thompson, William F. Cleveland, and James Campbell were defendants, dismissing the bill of the complainant and ordering him to pay the costs of the suit, which decree was, as your petitioner is advised and believes, erroneous, and ought to be reversed. And he further represents, that the matters in dispute in said cause, exclusive of costs, greatly exceed the sum or value of two thousand dollars.

Wherefore your petitioner prays that said decree, together with

the pleadings, exhibits, depositions, and proofs, and all other proceedings in said cause, may be duly transcribed and authenticated, and sent to the Supreme Court of the United States, and filed therein on the first Monday of December next, and that said decree may be reversed; and that the appellant may be restored to all things which he has lost by reason thereof.

SIDNEY E. COLLINS.

Dated, Mobile, June 22d, 1857.

Order.

Made by Hon. John Gayle on the said petition, to wit:—

The foregoing petition having been presented to me as one of the Judges of said Circuit Court for the Fifth Judicial Circuit, and Southern District of Alabama, for allowance; and having been read, the appeal is allowed as prayed therein, on the said petitioner's entering into bond in the sum of two thousand dollars conditioned as required by law; and such bond having been executed by him with Augustus Brooks and Edward A. Lewis, as sureties, the same is approved, and ordered to be filed.

Dated at Mobile, this 22d day of June, 1857.

JOHN GAYLE, *Dist. Judge.*

Filed 22d June, 1857. GEO. E. HOLT, *Clerk.*

Bond.

Know all men by these presents, that we, Sidney E. Collins, of San Antonia, Texas, and Edward A. Lewis and Augustus Brooks, of Mobile, Alabama, are held and firmly bound unto Drury Thompson, William F. Cleveland, and James Campbell, of Mobile, in the sum of two thousand dollars, to be paid to the said Thompson, Cleveland, and Campbell, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated at Mobile, this twenty-second day of June, 1857. Whereas, on the sixth day of May last, a decree was rendered in the Circuit Court of the United States for the Fifth Judicial Circuit, and Southern District of Alabama, in a cause therein then depending in equity, wherein the said Collins was complainant, and the said Thompson, Cleveland, and Campbell were defendants, against the said complainant. And the said Collins has prayed an appeal from the said decree to reverse the same, to the Supreme Court of the United States at Washington to the next term thereof, which appeal is granted on the filing of this bond. Now, therefore, the condition of the above obligation is such, that if the said Collins, appellant, shall prosecute his said appeal to effect, and answer all damages and costs; if he fail to make his plea good, then this obli-

gation shall be void, otherwise the same shall be and remain in full force and virtue.

SIDNEY E. COLLINS, [SEAL.]
E. A. LEWIS, [SEAL.]
A. BROOKS. [SEAL.]

Witness: T. J. DALE,
HORATIO N. GOULD.

The foregoing and within bond has been examined and approved by me, and ordered to be filed this 22d day of June, 1857.

JOHN GAYLE, *Dist. Judge, &c.*

Filed 22d June, 1857. GEO. E. HOLT, *Clerk.*

Agreement of Counsel as to the printed Record, etc.

Agreement entered into by the solicitors of the parties, to wit:—

SIDNEY E. COLLINS
vs.
DRURY THOMPSON, WM. F. CLEVELAND, JAMES CAMPBELL.

In Equity. Appeal from Circuit Court of the United States, Fifth Judicial Circuit and Southern District of Alabama, to the Supreme Court at Washington.

In the above entitled cause we do hereby agree, that the parties, appellant and defendants, may refer to, and use on the hearing in the Supreme Court, such parts of the printed record or transcript, of a cause heretofore depending and determined in said Court, known as The Heirs and Executors of Joshua Kennedy, deceased *vs.* Sidney E. Collins, and numbered 154, as either of said parties may think proper. This agreement is made at the request of the defendants.

CHANDLER, SMITH & HERNDON,
Solicitors for Defendants.

K. B. SEWALL,
Of Counsel for Appellant.

Mobile, Oct. 27, 1857.

Witness: GEO. W. MILLER.

Filed 28th October, 1857. GEO. E. HOLT, *Clerk.*

N. B. The same agreement is to be applicable to the printed brief of J. A. Campbell in the same above original case.

CHANDLER, SMITH & HERNDON,
Def'ts' Sol'rs.

K. B. SEWALL,
Of Counsel for Complainant and Appellant.

UNITED STATES OF AMERICA,
Southern District of Alabama.

I, George E. Holt, Clerk of the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama, do hereby certify that the within and foregoing pages, numbered from one to eighteen hundred and ninety-four inclusively, contain a full, true, and perfect exemplification of the record and proceedings in a certain cause lately pending and determined in said Court, wherein Sidney E. Collins was complainant, and Drury Thompson, William F. Cleveland, and James Campbell were defendants, as the same remain on file and of record in said Court. All of which, together with the original citation, etc., on the appeal in said cause is hereby certified to the Supreme Court of the United States.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand and affixed the seal of said Circuit Court this sixteenth day of November, eighteen hundred and fifty-seven. [SEAL.]

GEO. E. HOLT,
Clerk C. C. Sou. Dist. Ala.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss.*

To Drury Thompson, William F. Cleveland, and James Campbell, of Mobile, Alabama, greeting:—

Whereas, Sidney E. Collins has prayed an appeal from a decree lately rendered in the Circuit Court of the United States for the Fifth Judicial Circuit, and Southern District of Alabama, in a cause therein then depending, wherein he was complainant, and you were the defendants, to the Supreme Court of the United States, which appeal has been allowed, on his giving bond with security as provided by law: You are therefore cited and admonished hereby to be and appear before the said Supreme Court at Washington at the next term thereof to be holden on the first Monday of December next, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected, or reversed, and why speedy justice should not be done to the parties in that behalf.

Given under my hand, at Mobile, in the Southern District of Alabama, this twenty-second day of June, eighteen hundred and fifty-seven.

JOHN GAYLE, *Judge.*

Original.

SIDNEY E. COLLINS }
vs.
D. THOMPSON *et al.* }

Citation on appeal.

Filed 22d June, 1857. GEO. E. HOLT, *Clerk.*

Rec'd June 23d, 1857.